

**THIRTIETH DAY**

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MORNING SESSION

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Senate Chamber, Olympia, Tuesday, April 10, 2012

The Senate was called to order at 9:00 a.m. by the President Pro Tempore. The Secretary called the roll and announced to the President Pro Tempore that all Senators were present with the exception of Senators Hewitt, Hill, Hobbs, Holmquist Newbry, Pflug, Pridemore, Roach, Sheldon, Stevens, Tom and Zarelli.

The Sergeant at Arms Color Guard consisting of Lieutenant Governor's Staff Brent Pendleton and Brian Dirks, presented the Colors. Senator Morton offered the prayer.

MOTION

On motion of Senator Eide, the reading of the Journal of the previous day was dispensed with and it was approved.

MOTION

On motion of Senator Eide, the Senate advanced to the third order of business.

MESSAGE FROM THE GOVERNOR  
GUBERNATORIAL APPOINTMENTS

April 6, 2012

TO THE HONORABLE, THE SENATE OF THE STATE OF WASHINGTON

Ladies and Gentlemen:

I have the honor to submit the following reappointment, subject to your confirmation.

MARTA B. POWELL, reappointed March 27, 2012, for the term ending March 1, 2017, as Member of the Board of Tax Appeals.

Sincerely,

CHRISTINE O. GREGOIRE, Governor

Referred to Committee on Ways & Means.

MOTION

On motion of Senator Eide, the appointee listed on the Gubernatorial Appointment report was referred to the committee as designated.

MOTION

On motion of Senator Eide, the Senate advanced to the fifth order of business.

INTRODUCTION AND FIRST READING

SB 6639 by Senators Zarelli, Tom, Ericksen, Delvin and Padden

AN ACT Relating to across-the-board reductions to state appropriations; amending RCW 43.88.110; and declaring an emergency.

Referred to Committee on Ways & Means.

MOTION

On motion of Senator Eide, the measure listed on the Introduction and First Reading report was referred to the committee as designated.

MOTION

On motion of Senator Eide, the Senate advanced to the sixth order of business.

SECOND READING  
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Litzow moved that Gubernatorial Appointment No. 9078, Steve Miller, as a member of the Board of Trustees, Bellevue College District No. 8 be confirmed.

Senator Litzow spoke in favor of the motion.

MOTION

On motion of Senator Harper, Senators Haugen, Hobbs, Pridemore, Sheldon and Tom were excused.

MOTION

On motion of Senator Ericksen, Senators Becker, Benton, Carrell, Hewitt, Hill, Holmquist Newbry, Padden, Pflug, Roach, Stevens and Zarelli were excused.

APPOINTMENT OF STEVE MILLER

The President Pro Tempore declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9078, Steve Miller as a member of the Board of Trustees, Bellevue College District No. 8.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9078, Steve Miller as a member of the Board of Trustees, Bellevue College District No. 8 and the appointment was confirmed by the following vote: Yeas, 37; Nays, 1; Absent, 0; Excused, 11.

Voting yea: Senators Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Prentice, Ranker, Regala, Rolfes, Schoesler, Shin and Swecker

Voting nay: Senator Baumgartner

Excused: Senators Hewitt, Hill, Hobbs, Holmquist Newbry, Pflug, Pridemore, Roach, Sheldon, Stevens, Tom and Zarelli

Gubernatorial Appointment No. 9078, Steve Miller, having received the constitutional majority was declared confirmed as a member of the Board of Trustees Bellevue College District No. 8.

SECOND READING  
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Ranker moved that Gubernatorial Appointment No. 9174, Steven Adelstein, as a member of the Board of Trustees, Whatcom Community College District No. 21, be confirmed.

Senator Ranker spoke in favor of the motion.

## APPOINTMENT OF STEVEN ADELSTEIN

The President Pro Tempore declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9174, Steven Adelstein as a member of the Board of Trustees, Whatcom Community College District No. 21.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9174, Steven Adelstein as a member of the Board of Trustees, Whatcom Community College District No. 21 and the appointment was confirmed by the following vote: Yeas, 38; Nays, 1; Absent, 0; Excused, 10.

Voting yea: Senators Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Prentice, Ranker, Regala, Rolfes, Schoesler, Shin and Swecker

Voting nay: Senator Baumgartner

Excused: Senators Hewitt, Hill, Hobbs, Pflug, Pridemore, Roach, Sheldon, Stevens, Tom and Zarelli

Gubernatorial Appointment No. 9174, Steven Adelstein, having received the constitutional majority was declared confirmed as a member of the Board of Trustees, Whatcom Community College District No. 21.

## SECOND READING

## CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

## MOTION

Senator King moved that Gubernatorial Appointment No. 9199, Alan Haight, as Director of the Department of Licensing, be confirmed.

Senator King spoke in favor of the motion.

## APPOINTMENT OF ALAN HAIGHT

The President Pro Tempore declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9199, Alan Haight as Director of the Department of Licensing.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9199, Alan Haight as Director of the Department of Licensing and the appointment was confirmed by the following vote: Yeas, 39; Nays, 0; Absent, 0; Excused, 10.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Prentice, Ranker, Regala, Rolfes, Schoesler, Shin and Swecker

Excused: Senators Hewitt, Hill, Hobbs, Pflug, Pridemore, Roach, Sheldon, Stevens, Tom and Zarelli

Gubernatorial Appointment No. 9199, Alan Haight, having received the constitutional majority was declared confirmed as Director of the Department of Licensing.

## SECOND READING

SUBSTITUTE HOUSE BILL NO. 2491, by House Committee on Labor & Workforce Development (originally sponsored by Representatives Uptegrove and Orwall)

Addressing when predecessor-successor relationships do not exist for purposes of unemployment experience rating.

The measure was read the second time.

## MOTION

On motion of Senator Keiser, the rules were suspended, Substitute House Bill No. 2491 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Keiser, Holmquist Newbry and Fain spoke in favor of passage of the bill.

The President Pro Tempore declared the question before the Senate to be the final passage of Substitute House Bill No. 2491.

## ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2491 and the bill passed the Senate by the following vote: Yeas, 40; Nays, 0; Absent, 0; Excused, 9.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Prentice, Ranker, Regala, Roach, Rolfes, Schoesler, Shin and Swecker

Excused: Senators Hewitt, Hill, Hobbs, Pflug, Pridemore, Sheldon, Stevens, Tom and Zarelli

SUBSTITUTE HOUSE BILL NO. 2491, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

## SECOND READING

SUBSTITUTE HOUSE BILL NO. 2590, by House Committee on Business & Financial Services (originally sponsored by Representatives Bailey and Buys)

Extending the expiration of the pollution liability insurance agency's authority and its funding source.

The measure was read the second time.

## MOTION

On motion of Senator Fraser, the rules were suspended, Substitute House Bill No. 2590 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Fraser and Padden spoke in favor of passage of the bill.

The President Pro Tempore declared the question before the Senate to be the final passage of Substitute House Bill No. 2590.

## ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2590 and the bill passed the Senate by the following vote: Yeas, 40; Nays, 0; Absent, 0; Excused, 9.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser,

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Froctt, Hargrove, Harper, Hatfield, Haugen, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Prentice, Ranker, Regala, Roach, Rolfes, Schoesler, Shin and Swecker

On motion of Senator Zarelli, the striking amendment by Senator Baumgartner to Engrossed Senate Bill No. 6378 was withdrawn.

Excused: Senators Hewitt, Hill, Hobbs, Pflug, Pridemore, Sheldon, Stevens, Tom and Zarelli

MOTION

SUBSTITUTE HOUSE BILL NO. 2590, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

Senator Zarelli moved that the following striking amendment by Senators Baumgartner and Zarelli be adopted:

Strike everything after the enacting clause and insert the following:

MOTION

"Sec. 1. RCW 41.32.765 and 2007 c 491 s 2 are each amended to read as follows:

At 9:44 a.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

(1) NORMAL RETIREMENT. Any member with at least five service credit years of service who has attained at least age sixty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.760.

EVENING SESSION

The Senate was called to order at 6:05 p.m. by President Owen.

(2) EARLY RETIREMENT. Any member who has completed at least twenty service credit years of service who has attained at least age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.760, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

MOTION TO LIMIT DEBATE

Senator Eide: "Mr. President, I move that the members of the Senate be allowed to speak but once on each question before the Senate, that such speech be limited to three minutes and that members be prohibited from yielding their time, however, the maker of a motion shall be allowed to open and close debate. This motion shall be in effect through April 10, 2012."

(3) ALTERNATE EARLY RETIREMENT.

The President declared the question before the Senate to be the motion by Senator Eide to limit debate.

(a) Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.760, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

The motion by Senator Eide carried and debate was limited through April 10, 2012 by voice vote.

(b) On or after September 1, 2008, any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.760, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced as follows:

MOTION

On motion of Senator Eide, Rule 15 was suspended for the remainder of the day for the purpose of allowing continued floor action.

Retirement Age	Percent Reduction
55	20%
56	17%
57	14%
58	11%
59	8%
60	5%
61	2%
62	0%
63	0%
64	0%

EDITOR'S NOTE: Senate Rule 15 establishes the floor schedule and calls for a lunch and dinner break of 90 minutes each per day during regular daily sessions.

MOTION

On motion of Senator Eide, the rules were suspended and, pursuant to Rule 48, the Committee on Ways & Means was relieved of further consideration of Second Engrossed Substitute House bill No. 2127, Second Engrossed Second Substitute House bill No. 2565, House Bill No. 2822, Senate Bill No. 5127, Senate Bill No. 6074, Senate Bill No. 6635 and Senate Bill No. 5903; and the Committee on Rules was relieved of further consideration of House Bill No. 2824 and all the measures were placed on the day's second reading calendar without objection.

The Senate resumed consideration of Engrossed Senate Bill No. 6378 which had been deferred on April 7, 2012.

The President declared the question before the senate to be the motion by Senator Baumgartner to adopt the striking amendment by Senator Baumgartner to Engrossed Senate Bill No. 6378.

Any member who retires under the provisions of this subsection is ineligible for the postretirement employment provisions of RCW 41.32.802(2) until the retired member has reached sixty-five years

WITHDRAWAL OF AMENDMENT

of age. For purposes of this subsection, employment with an employer also includes any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer included under the provisions of RCW 41.32.800(1).

The subsidized reductions for alternate early retirement in this subsection as set forth in section 2, chapter 491, Laws of 2007 were intended by the legislature as replacement benefits for gain-sharing. Until there is legal certainty with respect to the repeal of chapter 41.31A RCW, the right to retire under this subsection is noncontractual, and the legislature reserves the right to amend or repeal this subsection. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, eligible members may still retire under this subsection, and upon receipt of the first installment of a retirement allowance computed under this subsection, the resulting benefit becomes contractual for the recipient. If the repeal of chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then retirement benefits for any member who has completed at least thirty service credit years and has attained age fifty-five but has not yet received the first installment of a retirement allowance under this subsection shall be computed using the reductions in (a) of this subsection.

(c) Members who first become employed by an employer in an eligible position on or after May 1, 2013, are not eligible for the alternate early retirement provisions of (a) or (b) of this subsection. Any member who first becomes employed by an employer in an eligible position on or after May 1, 2013, and has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.760, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by five percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

**Sec. 2.** RCW 41.32.875 and 2007 c 491 s 4 are each amended to read as follows:

(1) **NORMAL RETIREMENT.** Any member who is at least age sixty-five and who has:

(a) Completed ten service credit years; or

(b) Completed five service credit years, including twelve service credit months after attaining age forty-four; or

(c) Completed five service credit years by July 1, 1996, under plan 2 and who transferred to plan 3 under RCW 41.32.817;

shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.840.

(2) **EARLY RETIREMENT.** Any member who has attained at least age fifty-five and has completed at least ten years of service shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.840, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(3) **ALTERNATE EARLY RETIREMENT.**

(a) Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.840, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the

number of years between age at retirement and the attainment of age sixty-five.

(b) On or after September 1, 2008, any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.840, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced as follows:

Retirement Age	Percent Reduction
55	20%
56	17%
57	14%
58	11%
59	8%
60	5%
61	2%
62	0%
63	0%
64	0%

Any member who retires under the provisions of this subsection is ineligible for the postretirement employment provisions of RCW 41.32.862(2) until the retired member has reached sixty-five years of age. For purposes of this subsection, employment with an employer also includes any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer included under the provisions of RCW 41.32.860(1).

The subsidized reductions for alternate early retirement in this subsection as set forth in section 4, chapter 491, Laws of 2007 were intended by the legislature as replacement benefits for gain-sharing. Until there is legal certainty with respect to the repeal of chapter 41.31A RCW, the right to retire under this subsection is noncontractual, and the legislature reserves the right to amend or repeal this subsection. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, eligible members may still retire under this subsection, and upon receipt of the first installment of a retirement allowance computed under this subsection, the resulting benefit becomes contractual for the recipient. If the repeal of chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then retirement benefits for any member who has completed at least thirty service credit years and has attained age fifty-five but has not yet received the first installment of a retirement allowance under this subsection shall be computed using the reductions in (a) of this subsection.

(c) Members who first become employed by an employer in an eligible position on or after May 1, 2013, are not eligible for the alternate early retirement provisions of (a) or (b) of this subsection. Any member who first becomes employed by an employer in an

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eligible position on or after May 1, 2013, and has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.840, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by five percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

**Sec. 3.** RCW 41.35.420 and 2007 c 491 s 6 are each amended to read as follows:

(1) **NORMAL RETIREMENT.** Any member with at least five service credit years who has attained at least age sixty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.400.

(2) **EARLY RETIREMENT.** Any member who has completed at least twenty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.400, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(3) **ALTERNATE EARLY RETIREMENT.**

(a) Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.400, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(b) On or after September 1, 2008, any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.400, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced as follows:

Retirement Age	Percent Reduction
55	20%
56	17%
57	14%
58	11%
59	8%
60	5%
61	2%
62	0%
63	0%
64	0%

Any member who retires under the provisions of this subsection is ineligible for the postretirement employment provisions of RCW 41.35.060(2) until the retired member has reached sixty-five years of age. For purposes of this subsection, employment with an employer also includes any personal service contract, service by an

employer as a temporary or project employee, or any other similar compensated relationship with any employer included under the provisions of RCW 41.35.230(1).

The subsidized reductions for alternate early retirement in this subsection as set forth in section 6, chapter 491, Laws of 2007 were intended by the legislature as replacement benefits for gain-sharing. Until there is legal certainty with respect to the repeal of chapter 41.31A RCW, the right to retire under this subsection is noncontractual, and the legislature reserves the right to amend or repeal this subsection. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, eligible members may still retire under this subsection, and upon receipt of the first installment of a retirement allowance computed under this subsection, the resulting benefit becomes contractual for the recipient. If the repeal of chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then retirement benefits for any member who has completed at least thirty service credit years and has attained age fifty-five but has not yet received the first installment of a retirement allowance under this subsection shall be computed using the reductions in (a) of this subsection.

(c) Members who first become employed by an employer in an eligible position on or after May 1, 2013, are not eligible for the alternate early retirement provisions of (a) or (b) of this subsection. Any member who first becomes employed by an employer in an eligible position on or after May 1, 2013, and has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.400, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by five percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

**Sec. 4.** RCW 41.35.680 and 2007 c 491 s 8 are each amended to read as follows:

(1) **NORMAL RETIREMENT.** Any member who is at least age sixty-five and who has:

(a) Completed ten service credit years; or

(b) Completed five service credit years, including twelve service credit months after attaining age forty-four; or

(c) Completed five service credit years by September 1, 2000, under the public employees' retirement system plan 2 and who transferred to plan 3 under RCW 41.35.510;

shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.620.

(2) **EARLY RETIREMENT.** Any member who has attained at least age fifty-five and has completed at least ten years of service shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.620, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(3) **ALTERNATE EARLY RETIREMENT.**

(a) Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.620, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the

number of years between age at retirement and the attainment of age sixty-five.

(b) On or after September 1, 2008, any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.620, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced as follows:

Retirement Age	Percent Reduction
55	20%
56	17%
57	14%
58	11%
59	8%
60	5%
61	2%
62	0%
63	0%
64	0%

Any member who retires under the provisions of this subsection is ineligible for the postretirement employment provisions of RCW 41.35.060(2) until the retired member has reached sixty-five years of age. For purposes of this subsection, employment with an employer also includes any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer included under the provisions of RCW 41.35.230(1).

The subsidized reductions for alternate early retirement in this subsection as set forth in section 8, chapter 491, Laws of 2007 were intended by the legislature as replacement benefits for gain-sharing. Until there is legal certainty with respect to the repeal of chapter 41.31A RCW, the right to retire under this subsection is noncontractual, and the legislature reserves the right to amend or repeal this subsection. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, eligible members may still retire under this subsection, and upon receipt of the first installment of a retirement allowance computed under this subsection, the resulting benefit becomes contractual for the recipient. If the repeal of chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then retirement benefits for any member who has completed at least thirty service credit years and has attained age fifty-five but has not yet received the first installment of a retirement allowance under this subsection shall be computed using the reductions in (a) of this subsection.

(c) Members who first become employed by an employer in an eligible position on or after May 1, 2013, are not eligible for the alternate early retirement provisions of (a) or (b) of this subsection. Any member who first becomes employed by an employer in an

eligible position on or after May 1, 2013, and has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.620, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by five percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

**Sec. 5.** RCW 41.40.630 and 2007 c 491 s 9 are each amended to read as follows:

(1) **NORMAL RETIREMENT.** Any member with at least five service credit years who has attained at least age sixty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.620.

(2) **EARLY RETIREMENT.** Any member who has completed at least twenty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.620, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(3) **ALTERNATE EARLY RETIREMENT.**

(a) Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.620, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(b) On or after July 1, 2008, any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.620, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced as follows:

Retirement Age	Percent Reduction
55	20%
56	17%
57	14%
58	11%
59	8%
60	5%
61	2%
62	0%
63	0%
64	0%

Any member who retires under the provisions of this subsection is ineligible for the postretirement employment provisions of RCW 41.40.037(2)(d) until the retired member has reached sixty-five years of age. For purposes of this subsection, employment with an employer also includes any personal service contract, service by an

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employer as a temporary or project employee, or any other similar compensated relationship with any employer included under the provisions of RCW 41.40.690(1).

The subsidized reductions for alternate early retirement in this subsection as set forth in section 9, chapter 491, Laws of 2007 were intended by the legislature as replacement benefits for gain-sharing. Until there is legal certainty with respect to the repeal of chapter 41.31A RCW, the right to retire under this subsection is noncontractual, and the legislature reserves the right to amend or repeal this subsection. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, eligible members may still retire under this subsection, and upon receipt of the first installment of a retirement allowance computed under this subsection, the resulting benefit becomes contractual for the recipient. If the repeal of chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then retirement benefits for any member who has completed at least thirty service credit years and has attained age fifty-five but has not yet received the first installment of a retirement allowance under this subsection shall be computed using the reductions in (a) of this subsection.

(c) Members who first become employed by an employer in an eligible position on or after May 1, 2013, are not eligible for the alternate early retirement provisions of (a) or (b) of this subsection. Any member who first becomes employed by an employer in an eligible position on or after May 1, 2013, and has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.620, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by five percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

**Sec. 6.** RCW 41.40.820 and 2007 c 491 s 10 are each amended to read as follows:

(1) **NORMAL RETIREMENT.** Any member who is at least age sixty-five and who has:

- (a) Completed ten service credit years; or
- (b) Completed five service credit years, including twelve service credit months after attaining age forty-four; or

(c) Completed five service credit years by the transfer payment date specified in RCW 41.40.795, under the public employees' retirement system plan 2 and who transferred to plan 3 under RCW 41.40.795;

shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.790.

(2) **EARLY RETIREMENT.** Any member who has attained at least age fifty-five and has completed at least ten years of service shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.790, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(3) **ALTERNATE EARLY RETIREMENT.**

(a) Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.790, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the

number of years between age at retirement and the attainment of age sixty-five.

(b) On or after July 1, 2008, any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.790, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced as follows:

Retirement Age	Percent Reduction
55	20%
56	17%
57	14%
58	11%
59	8%
60	5%
61	2%
62	0%
63	0%
64	0%

Any member who retires under the provisions of this subsection is ineligible for the postretirement employment provisions of RCW 41.40.037(2)(d) until the retired member has reached sixty-five years of age. For purposes of this subsection, employment with an employer also includes any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer included under the provisions of RCW 41.40.850(1).

The subsidized reductions for alternate early retirement in this subsection as set forth in section 10, chapter 491, Laws of 2007 were intended by the legislature as replacement benefits for gain-sharing. Until there is legal certainty with respect to the repeal of chapter 41.31A RCW, the right to retire under this subsection is noncontractual, and the legislature reserves the right to amend or repeal this subsection. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, eligible members may still retire under this subsection, and upon receipt of the first installment of a retirement allowance computed under this subsection, the resulting benefit becomes contractual for the recipient. If the repeal of chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then retirement benefits for any member who has completed at least thirty service credit years and has attained age fifty-five but has not yet received the first installment of a retirement allowance under this subsection shall be computed using the reductions in (a) of this subsection.

(c) Members who first become employed by an employer in an eligible position on or after May 1, 2013, are not eligible for the alternate early retirement provisions of (a) or (b) of this subsection. Any member who first becomes employed by an employer in an

eligible position on or after May 1, 2013, and has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.790, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by five percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

**Sec. 7.** RCW 41.45.035 and 2009 c 561 s 2 are each amended to read as follows:

(1) Beginning July 1, 2001, the following long-term economic assumptions shall be used by the state actuary for the purposes of RCW 41.45.030:

(a) The growth in inflation assumption shall be 3.5 percent;

(b) The growth in salaries assumption, exclusive of merit or longevity increases, shall be 4.5 percent;

(c) The investment rate of return assumption shall be 8 percent; and

(d) The growth in system membership assumption shall be 1.25 percent for the public employees' retirement system, the public safety employees' retirement system, the school employees' retirement system, and the law enforcement officers' and firefighters' retirement system. The assumption shall be .90 percent for the teachers' retirement system.

(2) Beginning July 1, 2009, the growth in salaries assumption for the public employees' retirement system, the public safety employees' retirement system, the teachers' retirement system, the school employees' retirement system, plan 1 of the law enforcement officers' and firefighters' retirement system, and the Washington state patrol retirement system, exclusive of merit or longevity increases, shall be the sum of:

(a) The growth in inflation assumption in subsection (1)(a) of this section; and

(b) The productivity growth assumption of 0.5 percent.

(3) The following investment rate of return assumptions for the public employees' retirement system, the public safety employees' retirement system, the teachers' retirement system, the school employees' retirement system, plan 1 of the law enforcement officers' and firefighters' retirement system, and the Washington state patrol retirement system, shall be used by the state actuary for the purposes of RCW 41.45.030:

(a) Beginning July 1, 2013, the investment rate of return assumption shall be 7.9 percent.

(b) Beginning July 1, 2015, the investment rate of return assumption shall be 7.8 percent.

(c) Beginning July 1, 2017, the investment rate of return assumption shall be 7.7 percent.

(d) For valuation purposes, the state actuary shall only use the assumptions in (a) through (c) of this subsection after the effective date in (a) through (c) of this subsection.

(e) By June 1, 2017, the state actuary shall submit to the council information regarding the experience and financial condition of each state retirement system, and make recommendations regarding the long-term investment rate of return assumptions set forth in this subsection. The council shall review this and such other information as it may require.

(4)(a) Beginning with actuarial studies done after July 1, 2003, changes to plan asset values that vary from the long-term investment rate of return assumption shall be recognized in the actuarial value of assets over a period that varies up to eight years depending on the magnitude of the deviation of each year's investment rate of return relative to the long-term rate of return assumption. Beginning with actuarial studies performed after July 1, 2004, the actuarial value of assets shall not be greater than one hundred thirty percent of the market value of assets as of the valuation date or less than seventy percent of the market value of assets as of the valuation date.

Beginning April 1, 2004, the council, by affirmative vote of four councilmembers, may adopt changes to this asset value smoothing technique. Any changes adopted by the council shall be subject to revision by the legislature.

(b) The state actuary shall periodically review the appropriateness of the asset smoothing method in this section and recommend changes to the council as necessary. Any changes adopted by the council shall be subject to revision by the legislature.

**NEW SECTION. Sec. 8.** The select committee on pension policy, with the assistance of the department of labor and industries, shall study the issue of risk classifications of employees in the Washington state retirement systems that entail either high degrees of physical or psychological risk to the members' own safety or unusually high physical requirements that result in elevated risks of injury or disablement for older employees. The select committee on pension policy, with the assistance of the office of the superintendent of public instruction, shall also study existing early retirement factors and job requirements that may limit the effectiveness of the older classroom employee. The study shall identify groups and evaluate them for inclusion in the public safety employees' retirement system or the creation of other early retirement factors in the teachers' or school employees' retirement systems. The select committee on pension policy shall report the findings and recommendations of its study to the legislative fiscal committees by no later than December 15, 2012."

Senators Zarelli and Delvin spoke in favor of adoption of the striking amendment.

Senator Fraser spoke against adoption of the striking amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Baumgartner and Zarelli to Engrossed Senate Bill No. 6378.

The motion by Senator Zarelli carried and the striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "Relating to" strike the remainder of the title and insert "benefits and contributions for new members of the public employees' retirement system, the teachers' retirement system, and the school employees' retirement system; amending RCW 41.32.765, 41.32.875, 41.35.420, 41.35.680, 41.40.630, 41.40.820, and 41.45.035; and creating a new section."

#### MOTION

On motion of Senator Zarelli, the rules were suspended, Second Engrossed Senate Bill No. 6378 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Zarelli spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Engrossed Senate Bill No. 6378.

#### ROLL CALL

The Secretary called the roll on the final passage of Second Engrossed Senate Bill No. 6378 and the bill passed the Senate by the following vote: Yeas, 27; Nays, 22; Absent, 0; Excused, 0.

Voting yea: Senators Baumgartner, Becker, Carrell, Delvin, Ericksen, Fain, Hargrove, Hatfield, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, King, Litzow, Morton,

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Padden, Parlette, Pflug, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senators Benton, Brown, Chase, Conway, Eide, Fraser, Frockt, Harper, Haugen, Keiser, Kilmer, Kline, Kohl-Welles, McAuliffe, Murray, Nelson, Prentice, Pridemore, Ranker, Regala, Roach and Rolfes

SECOND ENGROSSED SENATE BILL NO. 6378, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### MOTION

On motion of Senator Eide, the Senate advanced to the seventh order of business.

#### THIRD READING

ENGROSSED SUBSTITUTE SENATE BILL NO. 6406, by Senate Committee on Energy, Natural Resources & Marine Waters (originally sponsored by Senators Hargrove, Hobbs, Delvin, Hatfield, Tom, Stevens, Regala, Morton, Ranker and Shin).

Modifying programs that provide for the protection of the state's natural resources.

The bill was read on Third Reading.

#### MOTION

On motion of Senator Hargrove, the rules were suspended and Engrossed Substitute Senate Bill No. 6406 was returned to second reading for the purpose of amendment.

#### SECOND READING

ENGROSSED SUBSTITUTE SENATE BILL NO. 6406, by Senate Committee on Energy, Natural Resources & Marine Waters (originally sponsored by Senators Hargrove, Hobbs, Delvin, Hatfield, Tom, Stevens, Regala, Morton, Ranker and Shin)

Modifying programs that provide for the protection of the state's natural resources.

The measure was read the second time.

#### MOTION

Senator Hargrove moved that the following striking amendment by Senators Hargrove and Schoesler be adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature finds that significant opportunities exist to modify programs that provide for management and protection of the state's natural resources, including the state's forests, fish, and wildlife, in order to streamline regulatory processes and achieve program efficiencies while at the same time increasing the sustainability of program funding and maintaining current levels of natural resource protection. The legislature intends to update provisions relating to natural resource management and regulatory programs including the hydraulic project approval program, forest practices act, and state environmental policy act, in order to achieve these opportunities.

#### PART ONE

#### Hydraulic Project Approvals

**Sec. 101.** RCW 77.55.011 and 2010 c 210 s 26 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Bed" means the land below the ordinary high water lines of state waters. This definition does not include irrigation ditches, canals, storm water runoff devices, or other artificial watercourses except where they exist in a natural watercourse that has been altered artificially.

(2) "Board" means the pollution control hearings board created in chapter 43.21B RCW.

(3) "Commission" means the state fish and wildlife commission.

(4) "Date of receipt" has the same meaning as defined in RCW 43.21B.001.

(5) "Department" means the department of fish and wildlife.

(6) "Director" means the director of the department of fish and wildlife.

(7) "Emergency" means an immediate threat to life, the public, property, or of environmental degradation.

(8) "Hydraulic project" means the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state.

(9) "Imminent danger" means a threat by weather, water flow, or other natural conditions that is likely to occur within sixty days of a request for a permit application.

(10) "Marina" means a public or private facility providing boat moorage space, fuel, or commercial services. Commercial services include but are not limited to overnight or live-aboard boating accommodations.

(11) "Marine terminal" means a public or private commercial wharf located in the navigable water of the state and used, or intended to be used, as a port or facility for the storing, handling, transferring, or transporting of goods to and from vessels.

(12) "Ordinary high water line" means the mark on the shores of all water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years as to mark upon the soil or vegetation a character distinct from the abutting upland. Provided, that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater is the line of mean higher high water and the ordinary high water line adjoining freshwater is the elevation of the mean annual flood.

(13) "Permit" means a hydraulic project approval permit issued under this chapter.

(14) "Sandbars" includes, but is not limited to, sand, gravel, rock, silt, and sediments.

(15) "Small scale prospecting and mining" means the use of only the following methods: Pans; nonmotorized sluice boxes; concentrators; and minirocker boxes for the discovery and recovery of minerals.

(16) "Spartina," "purple loosestrife," and "aquatic noxious weeds" have the same meanings as defined in RCW 17.26.020.

(17) "Streambank stabilization" means those projects that prevent or limit erosion, slippage, and mass wasting. These projects include, but are not limited to, bank resloping, log and debris relocation or removal, planting of woody vegetation, bank protection using rock or woody material or placement of jetties or groins, gravel removal, or erosion control.

(18) "Tide gate" means a one-way check valve that prevents the backflow of tidal water.

(19) "Waters of the state" and "state waters" means all salt and freshwaters waterward of the ordinary high water line and within the territorial boundary of the state.

(20) "Emergency permit" means a verbal hydraulic project approval or the written follow-up to the verbal approval issued to a person under RCW 77.55.021(12).

(21) "Expedited permit" means a hydraulic project approval issued to a person under RCW 77.55.021 (14) and (16).

(22) "Forest practices hydraulic project" means a hydraulic project that requires a forest practices application or notification under chapter 76.09 RCW.

(23) "Multiple site permit" means a hydraulic project approval issued to a person under RCW 77.55.021 for hydraulic projects occurring at more than one specific location and which includes site-specific requirements.

(24) "Pamphlet hydraulic project" means a hydraulic project for the removal or control of aquatic noxious weeds conducted under the aquatic plants and fish pamphlet authorized by RCW 77.55.081, or for mineral prospecting and mining conducted under the gold and fish pamphlet authorized by RCW 77.55.091.

(25) "Permit modification" means a hydraulic project approval issued to a person under RCW 77.55.021 that extends, renews, or changes the conditions of a previously issued hydraulic project approval.

**Sec. 102.** RCW 77.55.021 and 2010 c 210 s 27 are each amended to read as follows:

(1) Except as provided in RCW 77.55.031, 77.55.051, ~~((and))~~ 77.55.041, and section 201 of this act, in the event that any person or government agency desires to undertake a hydraulic project, the person or government agency shall, before commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life.

(2) A complete written application for a permit may be submitted in person or by registered mail and must contain the following:

(a) General plans for the overall project;

(b) Complete plans and specifications of the proposed construction or work within the mean higher high water line in saltwater or within the ordinary high water line in freshwater;

(c) Complete plans and specifications for the proper protection of fish life; ~~((and))~~

(d) Notice of compliance with any applicable requirements of the state environmental policy act, unless otherwise provided for in this chapter; and

(e) Payment of all applicable application fees charged by the department under section 103 of this act.

(3) The department may establish direct billing accounts or other funds transfer methods with permit applicants to satisfy the fee payment requirements of section 103 of this act.

(4) The department may accept complete, written applications as provided in this section for multiple site permits and may issue these permits. For multiple site permits, each specific location must be identified.

(5) With the exception of emergency permits as provided in subsection (12) of this section, applications for permits must be submitted to the department's headquarters office in Olympia. Requests for emergency permits as provided in subsection (12) of this section may be made to the permitting biologist assigned to the location in which the emergency occurs, to the department's regional office in which the emergency occurs, or to the department's headquarters office.

(6) Except as provided for emergency permits in subsection (12) of this section, the department may not proceed with permit review until all fees are paid in full as required in section 103 of this act.

(7)(a) Protection of fish life is the only ground upon which

approval of a permit may be denied or conditioned. Approval of a permit may not be unreasonably withheld or unreasonably conditioned.

~~((b))~~ ~~((8))~~, ~~((10))~~, ~~and~~ ~~((12))~~ through (14) and (16) of this section, the department has forty-five calendar days upon receipt of a complete application to grant or deny approval of a permit. The forty-five day requirement is suspended if:

(i) After ten working days of receipt of the application, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project;

(ii) The site is physically inaccessible for inspection;

(iii) The applicant requests a delay; or

(iv) The department is issuing a permit for a storm water discharge and is complying with the requirements of RCW 77.55.161(3)(b).

~~((b))~~ (c) Immediately upon determination that the forty-five day period is suspended under (b) of this subsection, the department shall notify the applicant in writing of the reasons for the delay.

~~((e))~~ (d) The period of forty-five calendar days may be extended if the permit is part of a multiagency permit streamlining effort and all participating permitting agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days.

~~((4))~~ (8) If the department denies approval of a permit, the department shall provide the applicant a written statement of the specific reasons why and how the proposed project would adversely affect fish life.

(a) Except as provided in (b) of this subsection, issuance, denial, conditioning, or modification of a permit shall be appealable to the board within thirty days from the date of receipt of the decision as provided in RCW 43.21B.230.

(b) Issuance, denial, conditioning, or modification of a permit may be informally appealed to the department within thirty days from the date of receipt of the decision. Requests for informal appeals must be filed in the form and manner prescribed by the department by rule. A permit decision that has been informally appealed to the department is appealable to the board within thirty days from the date of receipt of the department's decision on the informal appeal.

~~((5))~~ (9)(a) The permittee must demonstrate substantial progress on construction of that portion of the project relating to the permit within two years of the date of issuance.

(b) Approval of a permit is valid for ~~((a period of))~~ up to five years from the date of issuance, except as provided in (c) of this subsection and in RCW 77.55.151.

(c) A permit remains in effect without need for periodic renewal for hydraulic projects that divert water for agricultural irrigation or stock watering purposes and that involve seasonal construction or other work. A permit for streambank stabilization projects to protect farm and agricultural land as defined in RCW 84.34.020 remains in effect without need for periodic renewal if the problem causing the need for the streambank stabilization occurs on an annual or more frequent basis. The permittee must notify the appropriate agency before commencing the construction or other work within the area covered by the permit.

~~((6))~~ (10) The department may, after consultation with the permittee, modify a permit due to changed conditions. A modification under this subsection is not subject to the fees provided under section 103 of this act. The modification is appealable as provided in subsection ~~((4))~~ (8) of this section. For a hydraulic project ~~((s))~~ that diverts water for agricultural irrigation or stock watering purposes, ~~((e))~~ when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the

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department to show that changed conditions warrant the modification in order to protect fish life.

~~((7))~~ (11) A permittee may request modification of a permit due to changed conditions. The request must be processed within forty-five calendar days of receipt of the written request and payment of applicable fees under section 103 of this act. A decision by the department is appealable as provided in subsection ~~((4))~~ (8) of this section. For a hydraulic project(s) that diverts water for agricultural irrigation or stock watering purposes, ~~((6))~~ when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the permittee to show that changed conditions warrant the requested modification and that such a modification will not impair fish life.

~~((8))~~ (12)(a) The department, the county legislative authority, or the governor may declare and continue an emergency. If the county legislative authority declares an emergency under this subsection, it shall immediately notify the department. A declared state of emergency by the governor under RCW 43.06.010 shall constitute a declaration under this subsection.

(b) The department, through its authorized representatives, shall issue immediately, upon request, ~~((oral))~~ verbal approval for a stream crossing, or work to remove any obstructions, repair existing structures, restore streambanks, protect fish life, or protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written permit prior to commencing work. Conditions of the emergency ~~((oral))~~ verbal permit must be ~~((established by the department and))~~ reduced to writing within thirty days and complied with as provided for in this chapter.

(c) The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

~~((9))~~ (d) The department may not charge a person requesting an emergency permit any of the fees authorized by section 103 of this act until after the emergency permit is issued and reduced to writing.

(13) All state and local agencies with authority under this chapter to issue permits or other authorizations in connection with emergency water withdrawals and facilities authorized under RCW 43.83B.410 shall expedite the processing of such permits or authorizations in keeping with the emergency nature of such requests and shall provide a decision to the applicant within fifteen calendar days of the date of application.

~~((4))~~ (14) The department or the county legislative authority may determine an imminent danger exists. The county legislative authority shall notify the department, in writing, if it determines that an imminent danger exists. In cases of imminent danger, the department shall issue an expedited written permit, upon request, for work to remove any obstructions, repair existing structures, restore banks, protect fish resources, or protect property. Expedited permit requests require a complete written application as provided in subsection (2) of this section and must be issued within fifteen calendar days of the receipt of a complete written application. Approval of an expedited permit is valid for up to sixty days from the date of issuance. The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

~~((1))~~ (15)(a) For any property, except for property located on a marine shoreline, that has experienced at least two consecutive years of flooding or erosion that has damaged or has threatened to damage a major structure, water supply system, septic system, or access to any road or highway, the county legislative authority may determine that a chronic danger exists. The county legislative authority shall notify the department, in writing, when it determines

that a chronic danger exists. In cases of chronic danger, the department shall issue a permit, upon request, for work necessary to abate the chronic danger by removing any obstructions, repairing existing structures, restoring banks, restoring road or highway access, protecting fish resources, or protecting property. Permit requests must be made and processed in accordance with subsections (2) and ~~((3))~~ (7) of this section.

(b) Any projects proposed to address a chronic danger identified under (a) of this subsection that satisfies the project description identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions of the state environmental policy act, chapter 43.21C RCW. However, the project is subject to the review process established in RCW 77.55.181(3) as if it were a fish habitat improvement project.

~~((2))~~ (16) The department may issue an expedited written permit in those instances where normal permit processing would result in significant hardship for the applicant or unacceptable damage to the environment. Expedited permit requests require a complete written application as provided in subsection (2) of this section and must be issued within fifteen calendar days of the receipt of a complete written application. Approval of an expedited permit is valid for up to sixty days from the date of issuance. The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

NEW SECTION. Sec. 103. A new section is added to chapter 77.55 RCW to read as follows:

(1) The department shall charge an application fee of one hundred fifty dollars for a hydraulic project permit or permit modification issued under RCW 77.55.021 where the project is located at or below the ordinary high water line. The application fee established under this subsection may not be charged after June 30, 2017.

(2) The following hydraulic projects are exempt from all fees listed under this section:

(a) Hydraulic projects approved under applicant-funded contracts with the department that pay for the costs of processing those projects;

(b) If sections 201 through 203 of this act are enacted into law by June 30, 2012, forest practices hydraulic projects;

(c) Pamphlet hydraulic projects;

(d) Mineral prospecting and mining activities; and

(e) Hydraulic projects occurring on farm and agricultural land, as that term is defined in RCW 84.34.020.

(3) All fees collected under this section must be deposited in the hydraulic project approval account created in section 104 of this act.

(4) The fee provisions contained in this section are prospective only. The department of fish and wildlife may not charge fees for hydraulic project permits issued under this title prior to the effective date of this section.

(5) This section expires June 30, 2017.

NEW SECTION. Sec. 104. A new section is added to chapter 77.55 RCW to read as follows:

(1) The hydraulic project approval account is created in the state treasury. All receipts from application fees for hydraulic project approval applications collected under section 103 of this act must be deposited into the account.

(2) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the hydraulic project approval account may be spent only after appropriation.

(3) Expenditures from the hydraulic project approval account may be used only to fund department activities relating to implementing and operating the hydraulic project approval program.

**Sec. 105.** RCW 77.55.151 and 2005 c 146 s 502 are each amended to read as follows:

(1) (For a marina or marine terminal in existence on June 6, 1996, or a marina or marine terminal that has received a permit for its initial construction, a renewable, five-year permit shall be issued, upon request, for regular maintenance activities of the marina or marine terminal.

(2) Upon construction of a new marina or marine terminal that has received a permit, a renewable, five-year permit shall be issued, upon request, for regular maintenance activities of the marina or marine terminal.

(3) For the purposes of this section, regular maintenance activities are only those activities necessary to restore the marina or marine terminal to the conditions approved in the initial permit. These activities may include, but are not limited to, dredging, piling replacement, and float replacement.

(4)) Upon application under RCW 77.55.021, the department shall issue a renewable, five-year permit to a marina or marine terminal for its regular maintenance activities identified in the application.

(2) For the purposes of this section, regular maintenance activities may include, but are not limited to:

(a) Maintenance or repair of a boat ramp, launch, or float within the existing footprint;

(b) Maintenance or repair of an existing overwater structure within the existing footprint;

(c) Maintenance or repair of boat lifts or railway launches;

(d) Maintenance or repair of pilings, including the replacement of bumper pilings;

(e) Dredging of less than fifty cubic yards;

(f) Maintenance or repair of shoreline armoring or bank protection;

(g) Maintenance or repair of wetland, riparian, or estuarine habitat; and

(h) Maintenance or repair of an existing outfall.

(3) The five-year permit must include a requirement that a fourteen-day notice be given to the department before regular maintenance activities begin.

(4) A permit under this section is subject to the application fee provided in section 103 of this act.

**Sec. 106.** RCW 77.55.231 and 2005 c 146 s 601 are each amended to read as follows:

(1) Conditions imposed upon a permit must be reasonably related to the project. The permit conditions must ensure that the project provides proper protection for fish life, but the department may not impose conditions that attempt to optimize conditions for fish life that are out of proportion to the impact of the proposed project.

(2) The permit must contain provisions allowing for minor modifications to the plans and specifications without requiring reissuance of the permit.

(3) The permit must contain provisions that allow for minor modifications to the required work timing without requiring the reissuance of the permit. "Minor modifications to the required work timing" means a minor deviation from the timing window set forth in the permit when there are no spawning or incubating fish present within the vicinity of the project.

**NEW SECTION. Sec. 107.** A new section is added to chapter 77.55 RCW to read as follows:

The department shall prepare and distribute technical and educational information to the general public to assist the public in complying with the requirements of this chapter, including the changes resulting from this act.

**NEW SECTION. Sec. 108.** A new section is added to chapter 77.55 RCW to read as follows:

The department shall develop a system to provide local governments, affected tribes, and other interested parties with access to hydraulic project approval applications.

**NEW SECTION. Sec. 109.** The director of fish and wildlife shall adopt any rules required or deemed necessary to implement RCW 77.55.011, 77.55.021, 77.55.151, 77.55.231, and sections 103, 104, 107, and 108 of this act.

## **PART TWO Hydraulic Project Approval and Forest Practices Integration**

**NEW SECTION. Sec. 201.** A new section is added to chapter 77.55 RCW to read as follows:

(1) The requirements of this chapter do not apply to any forest practices hydraulic project, or to any activities that are associated with such a project, upon incorporation of fish protection standards adopted under this chapter into the forest practices rules and approval of technical guidance as required under RCW 76.09.040, at which time these projects are regulated under chapter 76.09 RCW.

(2) The department must continue to conduct regulatory and enforcement activities under this chapter for forest practices hydraulic projects until the forest practices board incorporates fish protection standards adopted under this chapter into the forest practices rules and approves technical guidance as required under RCW 76.09.040.

(3) By December 31, 2013, the department shall adopt rules establishing the form and procedures for the concurrence review process consistent with section 202 of this act. The concurrence review process must allow the department up to thirty days to review forest practices hydraulic projects meeting the criteria under section 202(2) (a) and (b) of this act for consistency with fish protection standards.

(4) The department shall notify the department of natural resources prior to beginning a rule-making process that may affect activities regulated under chapter 76.09 RCW.

(5) The department shall act consistent with appendix M of the forest and fish report, as the term "forests and fish report" is defined in RCW 76.09.020, when modifying fish protection rules that may affect activities regulated under chapter 76.09 RCW.

(6) The department may review and provide comments on any forest practices application. The department shall review, and either verify that the review has occurred or comment on, forest practices applications that include a forest practices hydraulic project involving fish bearing waters or shorelines of the state, as that term is defined in RCW 90.58.030. Prior to commenting and whenever reasonably practicable, the department shall communicate with the applicant regarding the substance of the project.

(7) The department shall participate in effectiveness monitoring for forest practices hydraulic projects through its role in the review processes provided under WAC 222-08-160 as it existed on the effective date of this section.

**NEW SECTION. Sec. 202.** A new section is added to chapter 76.09 RCW to read as follows:

(1) The department may request information and technical assistance from the department of fish and wildlife regarding any forest practices hydraulic project regulated under this chapter.

(2) A concurrence review process is established for certain forest practices hydraulic projects, as follow:

(a) Prior to submitting an application to the department under RCW 76.09.050 that includes a forest practices hydraulic project involving one or more water crossing structures meeting the criteria of (b) of this subsection, the applicant shall submit water crossing structure plans and specifications to the department of fish and

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wildlife for concurrence review consistent with section 201(3) of this act.

(b) The concurrence review process applies only to:

(i) Culvert installation or replacement, and repair at or below the bankfull width, as that term is defined in WAC 222-16-010 on the effective date of this section, in fish bearing rivers and streams that exceed five percent gradient;

(ii) Bridge construction or replacement, and repair at or below the bankfull width, of fish bearing unconfined streams; or

(iii) Fill within the flood level - 100 year, as that term is defined in WAC 222-16-010, as it existed on the effective date of this section, of fish bearing unconfined streams.

(c) When submitting an application to the department under RCW 76.09.050, the applicant shall attach the following to the application:

(i) The concurrence review form issued by the department of fish and wildlife; and

(ii) Plans and specifications for each water crossing structure subject to concurrence review.

**Sec. 203.** RCW 76.09.040 and 2010 c 188 s 4 are each amended to read as follows:

(1)(a) Where necessary to accomplish the purposes and policies stated in RCW 76.09.010, and to implement the provisions of this chapter, the board shall adopt forest practices rules pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in this section that:

(i) Establish minimum standards for forest practices;

(ii) Provide procedures for the voluntary development of resource management plans which may be adopted as an alternative to the minimum standards in (a)(i) of this subsection if the plan is consistent with the purposes and policies stated in RCW 76.09.010 and the plan meets or exceeds the objectives of the minimum standards;

(iii) Set forth necessary administrative provisions;

(iv) Establish procedures for the collection and administration of forest practice fees as set forth by this chapter; and

(v) Allow for the development of watershed analyses.

(b) Forest practices rules pertaining to water quality protection shall be adopted by the board after reaching agreement with the director of the department of ecology or the director's designee on the board with respect ~~(thereto)~~ to these rules. All other forest practices rules shall be adopted by the board.

(c) Forest practices rules shall be administered and enforced by either the department or the local governmental entity as provided in this chapter. Such rules shall be adopted and administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

(2)(a) The board shall prepare proposed forest practices rules consistent with this section and chapter 34.05 RCW. In addition to any forest practices rules relating to water quality protection proposed by the board, the department of ecology may submit to the board proposed forest practices rules relating to water quality protection.

(b)(i) ((Prior to initiating the rule-making process, the proposed rules shall be submitted for review and comments to the department of fish and wildlife and to the counties of the state. After receipt of the proposed forest practices rules, the department of fish and wildlife and the counties of the state shall have thirty days in which to review and submit comments to the board, and to the department of ecology with respect to its proposed rules relating to water quality protection.

(ii) After the expiration of the thirty day period,) The board ((and the department of ecology)) shall ((jointly)) hold one or more hearings on the proposed rules pursuant to chapter 34.05 RCW.

Any county representative may propose specific forest practices rules relating to problems existing within the county at the hearings.

~~((iii))~~ (ii) The board may adopt and the department of ecology may approve such proposals if they find the proposals are consistent with the purposes and policies of this chapter.

(3)(a) The board shall incorporate into the forest practices rules those fish protection standards in the rules adopted under chapter 77.55 RCW, as the rules existed on the effective date of this section, that are applicable to activities regulated under the forest practices rules. If fish protection standards are incorporated by reference, the board shall minimize administrative processes by utilizing the exception from the administrative procedures controlling significant legislative rules under RCW 34.05.328(5)(b)(iii) for the incorporation of rules adopted by other state agencies.

(b) Thereafter, the board shall incorporate into the forest practices rules any changes to those fish protection standards in the rules adopted under chapter 77.55 RCW that are: (i) Adopted consistent with section 201 of this act; and (ii) applicable to activities regulated under the forest practices rules. If fish protection standards are incorporated by reference, the board shall minimize administrative processes by utilizing the exception from the administrative procedures controlling significant legislative rules under RCW 34.05.328(5)(b)(iii) for the incorporation of rules adopted by other state agencies.

(c) The board shall establish and maintain technical guidance in the forest practices board manual, as provided under WAC 222-12-090 as it existed on the effective date of this section, to assist with implementation of the standards incorporated into the forest practices rules under this section. The guidance must include best management practices and standard techniques to ensure fish protection.

(d) The board must complete the requirements of (a) of this subsection and establish initial technical guidance under (c) of this subsection by December 31, 2013.

(4)(a) The board shall establish by rule a program for the acquisition of riparian open space and critical habitat for threatened or endangered species as designated by the board. Acquisition must be a conservation easement. Lands eligible for acquisition are forest lands within unconfined channel migration zones or forest lands containing critical habitat for threatened or endangered species as designated by the board. Once acquired, these lands may be held and managed by the department, transferred to another state agency, transferred to an appropriate local government agency, or transferred to a private nonprofit nature conservancy corporation, as defined in RCW 64.04.130, in fee or transfer of management obligation. The board shall adopt rules governing the acquisition by the state or donation to the state of such interest in lands including the right of refusal if the lands are subject to unacceptable liabilities. The rules shall include definitions of qualifying lands, priorities for acquisition, and provide for the opportunity to transfer such lands with limited warranties and with a description of boundaries that does not require full surveys where the cost of securing the surveys would be unreasonable in relation to the value of the lands conveyed. The rules shall provide for the management of the lands for ecological protection or fisheries enhancement. For the purposes of conservation easements entered into under this section, the following apply:

(i) For conveyances of a conservation easement in which the landowner conveys an interest in the trees only, the compensation must include the timber value component, as determined by the cruised volume of any timber located within the channel migration zone or critical habitat for threatened or endangered species as designated by the board, multiplied by the appropriate quality code stumpage value for timber of the same species shown on the

appropriate table used for timber harvest excise tax purposes under RCW 84.33.091;

(ii) For conveyances of a conservation easement in which the landowner conveys interests in both land and trees, the compensation must include the timber value component in (a)(i) of this subsection plus such portion of the land value component as determined just and equitable by the department. The land value component must be the acreage of qualifying channel migration zone or critical habitat for threatened or endangered species as determined by the board, to be conveyed, multiplied by the average per acre value of all commercial forest land in western Washington or the average for eastern Washington, whichever average is applicable to the qualifying lands. The department must determine the western and eastern Washington averages based on the land value tables established by RCW 84.33.140 and revised annually by the department of revenue.

(b) Subject to appropriations sufficient to cover the cost of such an acquisition program and the related costs of administering the program, the department must establish a conservation easement in land that an owner tenders for purchase; provided that such lands have been taxed as forest lands and are located within an unconfined channel migration zone or contain critical habitat for threatened or endangered species as designated by the board. Lands acquired under this section shall become riparian or habitat open space. These acquisitions shall not be deemed to trigger the compensating tax of chapters 84.33 and 84.34 RCW.

(c) Instead of offering to sell interests in qualifying lands, owners may elect to donate the interests to the state.

(d) Any acquired interest in qualifying lands by the state under this section shall be managed as riparian open space or critical habitat.

**NEW SECTION. Sec. 204.** A new section is added to chapter 77.55 RCW to read as follows:

(1) The department and the department of natural resources shall enter into and maintain a memorandum of agreement between the two agencies that describes how to implement integration of hydraulic project approvals into forest practices applications consistent with this act.

(2) The initial memorandum of agreement required under subsection (1) of this section between the two departments must be executed by December 31, 2012. The memorandum of agreement may be amended as agreed to by the two departments.

(3) The department and the department of natural resources shall enter into and maintain an interagency contract to ensure implementation of this act and the memorandum of agreement between the two agencies required under subsection (1) of this section. The contract must include funding provisions for the department's review of forest practices hydraulic projects.

**Sec. 205.** RCW 76.09.050 and 2011 c 207 s 1 are each amended to read as follows:

(1) The board shall establish by rule which forest practices shall be included within each of the following classes:

Class I: Minimal or specific forest practices that have no direct potential for damaging a public resource and that may be conducted without submitting an application or a notification except that when the regulating authority is transferred to a local governmental entity, those Class I forest practices that involve timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, are processed as Class IV forest practices, but are not subject to environmental review under chapter 43.21C RCW;

Class II: Forest practices which have a less than ordinary potential for damaging a public resource that may be conducted without submitting an application and may begin five calendar days, or such lesser time as the department may determine, after written notification by the operator, in the manner, content, and form as

prescribed by the department, is received by the department. However, the work may not begin until all forest practice fees required under RCW 76.09.065 have been received by the department. Class II shall not include forest practices:

(a) On forest lands that are being converted to another use;

(b) ((Which require approvals under the provisions of the hydraulics act, RCW 77.55.021;

(c)) Within "shorelines of the state" as defined in RCW 90.58.030;

((d)) (c) Excluded from Class II by the board; or

((e)) (d) Including timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, which are Class IV;

Class III: Forest practices other than those contained in Class I, II, or IV. A Class III application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department;

Class IV: Forest practices other than those contained in Class I or II:

(a) On forest lands that are being converted to another use;

(b) On lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development;

(c) That involve timber harvesting or road construction on forest lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except where the forest landowner provides:

(i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 or 84.34 RCW; or

(ii) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application; and/or

(d) Which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation shall be made within ten days from the date the department receives the application: PROVIDED, That nothing herein shall be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. A Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, (unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty calendar days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period) except that the department must: Approve or disapprove an application within sixty calendar days from the date the department receives the application if the department determines that a detailed statement must be made, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such a period. However, the applicant may not begin work on that forest

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practice until all forest practice fees required under RCW 76.09.065 have been received by the department.

Forest practices under Classes I, II, and III are exempt from the requirements for preparation of a detailed statement under the state environmental policy act.

(2) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, no Class II, Class III, or Class IV forest practice shall be commenced or continued after January 1, 1975, unless the department has received a notification with regard to a Class II forest practice or approved an application with regard to a Class III or Class IV forest practice containing all information required by RCW 76.09.060 as now or hereafter amended. However, in the event forest practices regulations necessary for the scheduled implementation of this chapter and RCW 90.48.420 have not been adopted in time to meet such schedules, the department shall have the authority to regulate forest practices and approve applications on such terms and conditions consistent with this chapter and RCW 90.48.420 and the purposes and policies of RCW 76.09.010 until applicable forest practices regulations are in effect.

(3) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, if a notification or application is delivered in person to the department by the operator or the operator's agent, the department shall immediately provide a dated receipt thereof. In all other cases, the department shall immediately mail a dated receipt to the operator.

(4) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, forest practices shall be conducted in accordance with the forest practices regulations, orders and directives as authorized by this chapter or the forest practices regulations, and the terms and conditions of any approved applications.

(5) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, the department of natural resources shall notify the applicant in writing of either its approval of the application or its disapproval of the application and the specific manner in which the application fails to comply with the provisions of this section or with the forest practices regulations. Except as provided otherwise in this section, if the department fails to either approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the operation may be commenced: PROVIDED, That this provision shall not apply to applications which are neither approved nor disapproved pursuant to the provisions of subsection (7) of this section: PROVIDED, FURTHER, That if seasonal field conditions prevent the department from being able to properly evaluate the application, the department may issue an approval conditional upon further review within sixty days (~~PROVIDED, FURTHER, That the department shall have until April 1, 1975, to approve or disapprove an application involving forest practices allowed to continue to April 1, 1975, under the provisions of subsection (2) of this section~~). Upon receipt of any notification or any satisfactorily completed application the department shall in any event no later than two business days after such receipt transmit a copy to the departments of ecology and fish and wildlife, and to the county, city, or town in whose jurisdiction the forest practice is to be commenced. Any comments by such agencies shall be directed to the department of natural resources.

(6) For those forest practices regulated by the board and the department, if the county, city, or town believes that an application is inconsistent with this chapter, the forest practices regulations, or any local authority consistent with RCW 76.09.240 as now or hereafter amended, it may so notify the department and the applicant, specifying its objections.

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(7) For those forest practices regulated by the board and the department, the department shall not approve portions of applications to which a county, city, or town objects if:

(a) The department receives written notice from the county, city, or town of such objections within fourteen business days from the time of transmittal of the application to the county, city, or town, or one day before the department acts on the application, whichever is later; and

(b) The objections relate to forest lands that are being converted to another use.

The department shall either disapprove those portions of such application or appeal the county, city, or town objections to the appeals board. If the objections related to (b) of this subsection are based on local authority consistent with RCW 76.09.240 as now or hereafter amended, the department shall disapprove the application until such time as the county, city, or town consents to its approval or such disapproval is reversed on appeal. The applicant shall be a party to all department appeals of county, city, or town objections. Unless the county, city, or town either consents or has waived its rights under this subsection, the department shall not approve portions of an application affecting such lands until the minimum time for county, city, or town objections has expired.

(8) For those forest practices regulated by the board and the department, in addition to any rights under the above paragraph, the county, city, or town may appeal any department approval of an application with respect to any lands within its jurisdiction. The appeals board may suspend the department's approval in whole or in part pending such appeal where there exists potential for immediate and material damage to a public resource.

(9) For those forest practices regulated by the board and the department, appeals under this section shall be made to the appeals board in the manner and time provided in RCW 76.09.205. In such appeals there shall be no presumption of correctness of either the county, city, or town or the department position.

(10) For those forest practices regulated by the board and the department, the department shall, within four business days notify the county, city, or town of all notifications, approvals, and disapprovals of an application affecting lands within the county, city, or town, except to the extent the county, city, or town has waived its right to such notice.

(11) For those forest practices regulated by the board and the department, a county, city, or town may waive in whole or in part its rights under this section, and may withdraw or modify any such waiver, at any time by written notice to the department.

(12) Notwithstanding subsections (2) through (5) of this section, forest practices applications or notifications are not required for exotic insect and disease control operations conducted in accordance with RCW 76.09.060(8) where eradication can reasonably be expected.

**Sec. 206.** RCW 76.09.060 and 2007 c 480 s 11 and 2007 c 106 s 1 are each reenacted and amended to read as follows:

(1) The department shall prescribe the form and contents of the notification and application. The forest practices rules shall specify by whom and under what conditions the notification and application shall be signed or otherwise certified as acceptable. Activities conducted by the department or a contractor under the direction of the department under the provisions of RCW 76.04.660, shall be exempt from the landowner signature requirement on any forest practices application required to be filed. The application or notification shall be delivered in person to the department, sent by first-class mail to the department or electronically filed in a form defined by the department. The form for electronic filing shall be readily convertible to a paper copy, which shall be available to the public pursuant to chapter 42.56 RCW. The information required may include, but is not limited to:

(a) Name and address of the forest landowner, timber owner, and operator;

(b) Description of the proposed forest practice or practices to be conducted;

(c) Legal description and tax parcel identification numbers of the land on which the forest practices are to be conducted;

(d) Planimetric and topographic maps showing location and size of all lakes and streams and other public waters in and immediately adjacent to the operating area and showing all existing and proposed roads and major tractor roads;

(e) Description of the silvicultural, harvesting, or other forest practice methods to be used, including the type of equipment to be used and materials to be applied;

(f) For an application or notification submitted on or after the effective date of section 202 of this act that includes a forest practices hydraulic project, plans and specifications for the forest practices hydraulic project to ensure the proper protection of fish life;

(g) Proposed plan for reforestation and for any revegetation necessary to reduce erosion potential from roadsides and yarding roads, as required by the forest practices rules;

~~((g))~~ (h) Soil, geological, and hydrological data with respect to forest practices;

~~((h))~~ (i) The expected dates of commencement and completion of all forest practices specified in the application;

~~((i))~~ (j) Provisions for continuing maintenance of roads and other construction or other measures necessary to afford protection to public resources;

~~((j))~~ (k) An affirmation that the statements contained in the notification or application are true; and

~~((k))~~ (l) All necessary application or notification fees.

(2) Long range plans may be submitted to the department for review and consultation.

(3) The application for a forest practice or the notification of a forest practice is subject to the reforestation requirement of RCW 76.09.070.

(a) If the application states that any land will be or is intended to be converted:

(i) The reforestation requirements of this chapter and of the forest practices rules shall not apply if the land is in fact converted unless applicable alternatives or limitations are provided in forest practices rules issued under RCW 76.09.070;

(ii) Completion of such forest practice operations shall be deemed conversion of the lands to another use for purposes of chapters 84.33 and 84.34 RCW unless the conversion is to a use permitted under a current use tax agreement permitted under chapter 84.34 RCW;

(iii) The forest practices described in the application are subject to applicable county, city, town, and regional governmental authority permitted under RCW 76.09.240 as well as the forest practices rules.

(b) Except as provided elsewhere in this section, if the landowner harvests without an approved application or notification or the landowner does not state that any land covered by the application or notification will be or is intended to be converted, and the department or the county, city, town, or regional governmental entity becomes aware of conversion activities to a use other than commercial timber operations, as that term is defined in RCW 76.09.020, then the department shall send to the department of ecology and the appropriate county, city, town, and regional governmental entities the following documents:

(i) A notice of a conversion to nonforestry use;

(ii) A copy of the applicable forest practices application or notification, if any; and

(iii) Copies of any applicable outstanding final orders or decisions issued by the department related to the forest practices application or notification.

(c) Failure to comply with the reforestation requirements contained in any final order or decision shall constitute a removal of designation under the provisions of RCW 84.33.140, and a change of use under the provisions of RCW 84.34.080, and, if applicable, shall subject such lands to the payments and/or penalties resulting from such removals or changes.

(d) Conversion to a use other than commercial forest product operations within six years after approval of the forest practices application or notification without the consent of the county, city, or town shall constitute a violation of each of the county, municipal city, town, and regional authorities to which the forest practice operations would have been subject if the application had stated an intent to convert.

(e) Land that is the subject of a notice of conversion to a nonforestry use produced by the department and sent to the department of ecology and a local government under this subsection is subject to the development prohibition and conditions provided in RCW 76.09.460.

(f) Landowners who have not stated an intent to convert the land covered by an application or notification and who decide to convert the land to a nonforestry use within six years of receiving an approved application or notification must do so in a manner consistent with RCW 76.09.470.

(g) The application or notification must include a statement requiring an acknowledgment by the forest landowner of his or her intent with respect to conversion and acknowledging that he or she is familiar with the effects of this subsection.

(4) Whenever an approved application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department two days before the commencement of actual operations.

(5) Before the operator commences any forest practice in a manner or to an extent significantly different from that described in a previously approved application or notification, there shall be submitted to the department a new application or notification form in the manner set forth in this section.

~~(6)(a)~~ Except as provided in RCW 76.09.350(4), the notification to or the approval given by the department to an application to conduct a forest practice shall be effective for a term of ~~((two))~~ three years from the date of approval or notification ~~((and shall not be renewed unless a new application is filed and approved or a new notification has been filed))~~.

(b) A notification or application may be renewed for an additional three-year term by the filing and approval of a notification or application, as applicable, prior to the expiration of the original application or notification. A renewal application or notification is subject to the forest practices rules in effect at the time the renewal application or notification is filed. Nothing in this section precludes the applicant from applying for a new application or notification after the renewal period has lapsed.

(c) At the option of the applicant, an application or notification may be submitted to cover a single forest practice or a number of forest practices within reasonable geographic or political boundaries as specified by the department. An application or notification that covers more than one forest practice may have an effective term of more than ~~((two))~~ three years.

~~(d)~~ The board shall adopt rules that establish standards and procedures for approving an application or notification that has an effective term of more than ~~((two))~~ three years. Such rules shall include extended time periods for application or notification

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approval or disapproval. ~~((On an approved application with a term of more than two years, the applicant shall inform the department before commencing operations))~~ The department may require the applicant to provide advance notice before commencing operations on an approved application or notification.

(7) Notwithstanding any other provision of this section, no prior application or notification shall be required for any emergency forest practice necessitated by fire, flood, windstorm, earthquake, or other emergency as defined by the board, but the operator shall submit an application or notification, whichever is applicable, to the department within forty-eight hours after commencement of such practice or as required by local regulations.

(8) Forest practices applications or notifications are not required for forest practices conducted to control exotic forest insect or disease outbreaks, when conducted by or under the direction of the department of agriculture in carrying out an order of the governor or director of the department of agriculture to implement pest control measures as authorized under chapter 17.24 RCW, and are not required when conducted by or under the direction of the department in carrying out emergency measures under a forest health emergency declaration by the commissioner of public lands as provided in RCW 76.06.130.

(a) For the purposes of this subsection, exotic forest insect or disease has the same meaning as defined in RCW 76.06.020.

(b) In order to minimize adverse impacts to public resources, control measures must be based on integrated pest management, as defined in RCW 17.15.010, and must follow forest practices rules relating to road construction and maintenance, timber harvest, and forest chemicals, to the extent possible without compromising control objectives.

(c) Agencies conducting or directing control efforts must provide advance notice to the appropriate regulatory staff of the department of the operations that would be subject to exemption from forest practices application or notification requirements.

(d) When the appropriate regulatory staff of the department are notified under (c) of this subsection, they must consult with the landowner, interested agencies, and affected tribes, and assist the notifying agencies in the development of integrated pest management plans that comply with forest practices rules as required under (b) of this subsection.

(e) Nothing under this subsection relieves agencies conducting or directing control efforts from requirements of the federal clean water act as administered by the department of ecology under RCW 90.48.260.

(f) Forest lands where trees have been cut as part of an exotic forest insect or disease control effort under this subsection are subject to reforestation requirements under RCW 76.09.070.

(g) The exemption from obtaining approved forest practices applications or notifications does not apply to forest practices conducted after the governor, the director of the department of agriculture, or the commissioner of public lands have declared that an emergency no longer exists because control objectives have been met, that there is no longer an imminent threat, or that there is no longer a good likelihood of control.

**Sec. 207.** RCW 76.09.150 and 2000 c 11 s 7 are each amended to read as follows:

(1) The department shall make inspections of forest lands, before, during, and after the conducting of forest practices as necessary for the purpose of ensuring compliance with this chapter ~~((and)),~~ the forest practices rules, including forest practices rules incorporated under RCW 76.09.040(3), and to ensure that no material damage occurs to the natural resources of this state as a result of ~~((such))~~ forest practices.

(2) Any duly authorized representative of the department shall have the right to enter upon forest land at any reasonable time to enforce the provisions of this chapter and the forest practices rules.

(3) The department or the department of ecology may apply for an administrative inspection warrant to either Thurston county superior court, or the superior court in the county in which the property is located. An administrative inspection warrant may be issued where:

(a) The department has attempted an inspection of forest lands under this chapter to ensure compliance with this chapter and the forest practices rules or to ensure that no potential or actual material damage occurs to the natural resources of this state, and access to all or part of the forest lands has been actually or constructively denied; or

(b) The department has reasonable cause to believe that a violation of this chapter or of rules adopted under this chapter is occurring or has occurred.

(4) In connection with any watershed analysis, any review of a pending application by an identification team appointed by the department, any compliance studies, any effectiveness monitoring, or other research that has been agreed to by a landowner, the department may invite representatives of other agencies, tribes, and interest groups to accompany a department representative and, at the landowner's election, the landowner, on any such inspections. Reasonable efforts shall be made by the department to notify the landowner of the persons being invited onto the property and the purposes for which they are being invited.

**NEW SECTION. Sec. 208.** A new section is added to chapter 43.30 RCW to read as follows:

(1) By December 31, 2013, the department must make examples of complete, high quality forest practices applications and the resulting approvals readily available to the public on its internet site, as well as the internet site of the office of regulatory assistance established in RCW 43.42.010. The department must maximize assistance to the public and interested parties by seeking to make readily available examples from forest practices that generate significant permitting activity or frequent questions.

(2) The department must regularly review and update the examples required to be made available on the internet under subsection (1) of this section.

(3) The department must obtain the written permission of an applicant before making publicly available that applicant's application or approval under this section and must work cooperatively with the applicant to ensure that no personal or proprietary information is made available.

**Sec. 209.** RCW 76.09.065 and 2000 c 11 s 5 are each amended to read as follows:

(1) ~~((Effective July 1, 1997,))~~ An applicant shall pay an application fee ((and a recording fee)), if applicable, at the time an application or notification is submitted to the department or to the local governmental entity as provided in this chapter.

(2) ~~((For applications and notifications submitted to the department, the application fee))~~ (a) If sections 201 through 203 and 206 of this act are not enacted into law by June 30, 2012, then the fee for applications and notifications submitted to the department shall be fifty dollars for class II, III, and IV forest practices applications or notifications relating to the commercial harvest of timber. However, the fee shall be five hundred dollars for class IV forest practices applications on lands being converted to other uses or on lands which are not to be reforested because of the likelihood of future conversion to urban development or on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except the fee shall be fifty dollars on those lands where the forest landowner provides:

~~((a))~~ (i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or

~~((b))~~ (ii) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the forest practices application.

(b)(i) If sections 201 through 203 and 206 of this act are enacted into law by June 30, 2012, then:

(A) The fee for applications and notifications relating to the commercial harvest of timber submitted to the department shall be one hundred dollars for class II applications and notifications, class III applications, and class IV forest practices that have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW, when the application or notification is submitted by a landowner who satisfies the definition of small forest landowner provided in RCW 76.09.450 and the application or notification applies to a single contiguous ownership consisting of one or more parcels;

(B) The fee for applications and notifications relating to the commercial harvest of timber submitted to the department shall be one hundred fifty dollars for class II applications and notifications, class III applications, and class IV forest practices that have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW, when the application or notification is submitted by a landowner who does not satisfy the criteria for a reduced application fee as provided in (b)(i)(A) of this subsection (2); and

(C) The fee shall be one thousand five hundred dollars for class IV forest practices applications on lands being converted to other uses or on lands that are not to be reforested because of the likelihood of future conversion to urban development or on lands that are contained within urban growth areas, designated pursuant to chapter 36.70A RCW, except the fee shall be the same as for a class III forest practices application where the forest landowner provides:

(I) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or

(II) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the forest practices application.

(ii) If the board has not incorporated fish protection standards adopted under chapter 77.55 RCW into the forest practices rules and approved technical guidance as required under RCW 76.09.040 by December 31, 2013, the fee for applications and notifications submitted to the department shall be as provided under (a) of this subsection until the rules are adopted and technical guidance approved.

(3) The forest practices application account is created in the state treasury. Moneys in the account may be spent only after appropriation. All money collected from fees under ~~((this))~~ subsection (2) of this section shall be deposited in the ~~((state general fund))~~ forest practices application account for the purposes of implementing this chapter, chapter 76.13 RCW, and Title 222 WAC.

~~((3))~~ (4) For applications submitted to ~~((the))~~ a local governmental entity as provided in this chapter, the fee shall be

((five hundred dollars for class IV forest practices on lands being converted to other uses or lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except as otherwise provided in this section, unless a different fee is otherwise provided)) determined, collected, and retained by the local governmental entity.

~~((4))~~ Recording fees shall be as provided in chapter 36.18 RCW.

(5) An application fee under subsection (2) of this section shall be refunded or credited to the applicant if either the application or notification is disapproved by the department or the application or notification is withdrawn by the applicant due to restrictions imposed by the department.)

**Sec. 210.** RCW 76.09.470 and 2007 c 106 s 3 are each amended to read as follows:

(1) If a landowner who did not state an intent to convert his or her land to a nonforestry use decides to convert his or her land to a nonforestry use within six years of receiving an approved forest practices application or notification under this chapter, the landowner must:

(a) Stop all forest practices activities on the parcels subject to the proposed land use conversion to a nonforestry use;

(b) Contact the department of ecology and the applicable county, city, town, or regional governmental entity to begin the permitting process; and

(c) Notify the department ~~((and))~~, withdraw any applicable applications or notifications ~~((or request))~~, and submit a new application for the conversion. The fee for a new application for conversion under this subsection (1)(c) is the difference between the applicable fee for the new application under RCW 76.09.065 and the fee previously paid for the original application or notification, which must be deposited in the forest practices application account created in RCW 76.09.065.

(2) Upon being contacted by a landowner under this section, the county, city, town, or regional governmental entity must:

(a) Notify the department and request from the department the status of any applicable forest practices applications, notifications, or final orders or decisions; and

(b) Complete the following activities:

(i) Require that the landowner be in full compliance with chapter 43.21C RCW, if applicable;

(ii) Receive notification from the department that the landowner has resolved any outstanding final orders or decisions issued by the department; and

(iii) Make a determination as to whether or not the condition of the land in question is in full compliance with local ordinances and regulations. If full compliance is not found, a mitigation plan to address violations of local ordinances or regulations must be required for the parcel in question by the county, city, town, or regional governmental entity. Required mitigation plans must be prepared by the landowner and approved by the county, city, town, or regional governmental entity. Once approved, the mitigation plan must be implemented by the landowner. Mitigation measures that may be required include, but are not limited to, revegetation requirements to plant and maintain trees of sufficient maturity and appropriate species composition to restore critical area and buffer function or to be in compliance with applicable local government regulations.

**Sec. 211.** RCW 76.09.030 and 2008 c 46 s 1 are each amended to read as follows:

(1) There is hereby created the forest practices board of the state of Washington as an agency of state government consisting of members as follows:

(a) The commissioner of public lands or the commissioner's designee;

(b) The director of the department of ~~((community, trade, and economic development))~~ commerce or the director's designee;

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(c) The director of the department of agriculture or the director's designee;

(d) The director of the department of ecology or the director's designee;

(e) The director of the department of fish and wildlife or the director's designee;

(f) An elected member of a county legislative authority appointed by the governor(~~(:—PROVIDED, That such)~~, However, the county member's service on the board shall be conditioned on the member's continued service as an elected county official;

(g) One member representing a timber products union, appointed by the governor from a list of three names submitted by a timber labor coalition affiliated with a statewide labor organization that represents a majority of the timber product unions in the state; and

(h) Six members of the general public appointed by the governor, one of whom shall be a small forest landowner who actively manages his or her land, and one of whom shall be an independent logging contractor.

(2) ((The director of the department of fish and wildlife's service on the board may be terminated two years after August 18, 1999, if the legislature finds that after two years the department has not made substantial progress toward integrating the laws, rules, and programs governing forest practices, chapter 76.09 RCW, and the laws, rules, and programs governing hydraulic projects, chapter 77.55 RCW. Such a finding shall be based solely on whether the department of fish and wildlife makes substantial progress as defined in this subsection, and will not be based on other actions taken as a member of the board. Substantial progress shall include recommendations to the legislature for closer integration of the existing rule-making authorities of the board and the department of fish and wildlife, and closer integration of the forest practices and hydraulics permitting processes, including exploring the potential for a consolidated permitting process. These recommendations shall be designed to resolve problems currently associated with the existing dual regulatory and permitting processes.

(3)) The members of the initial board appointed by the governor shall be appointed so that the term of one member shall expire December 31, 1975, the term of one member shall expire December 31, 1976, the term of one member shall expire December 31, 1977, the terms of two members shall expire December 31, 1978, and the terms of two members shall expire December 31, 1979. Thereafter, each member shall be appointed for a term of four years. Vacancies on the board shall be filled in the same manner as the original appointments. Each member of the board shall continue in office until his or her successor is appointed and qualified. The commissioner of public lands or the commissioner's designee shall be the chair of the board.

((~~(4)~~)) (3) The board shall meet at such times and places as shall be designated by the chair or upon the written request of the majority of the board. The principal office of the board shall be at the state capital.

((~~(5)~~)) (4) Members of the board, except public employees and elected officials, shall be compensated in accordance with RCW 43.03.250. Each member shall be entitled to reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060.

((~~(6)~~)) (5) The board may employ such clerical help and staff pursuant to chapter 41.06 RCW as is necessary to carry out its duties.

**Sec. 212.** RCW 76.09.020 and 2010 c 210 s 19 and 2010 c 188 s 6 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adaptive management" means reliance on scientific methods to test the results of actions taken so that the management and related policy can be changed promptly and appropriately.

(2) "Appeals board" means the pollution control hearings board created by RCW 43.21B.010.

(3) "Application" means the application required pursuant to RCW 76.09.050.

(4) "Aquatic resources" includes water quality, salmon, other species of the vertebrate classes Cephalaspidomorphi and Osteichthyes identified in the forests and fish report, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dummi*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and their respective habitats.

(5) "Board" means the forest practices board created in RCW 76.09.030.

(6) "Commissioner" means the commissioner of public lands.

(7) "Contiguous" means land adjoining or touching by common corner or otherwise. Land having common ownership divided by a road or other right-of-way shall be considered contiguous.

(8) "Conversion to a use other than commercial timber operation" means a bona fide conversion to an active use which is incompatible with timber growing and as may be defined by forest practices rules.

(9) "Date of receipt" has the same meaning as defined in RCW 43.21B.001.

(10) "Department" means the department of natural resources.

(11) "Ecosystem services" means the benefits that the public enjoys as a result of natural processes and biological diversity.

(12) "Ecosystem services market" means a system in which providers of ecosystem services can access financing or market capital to protect, restore, and maintain ecological values, including the full spectrum of regulatory, quasiregulatory, and voluntary markets.

(13) "Fish passage barrier" means any artificial instream structure that impedes the free passage of fish.

(14) "Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. As it applies to the operation of the road maintenance and abandonment plan element of the forest practices rules on small forest landowners, the term "forest land" excludes:

(a) Residential home sites, which may include up to five acres; and

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

(15) "Forest landowner" means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner. However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

(16) "Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

(a) Road and trail construction, including forest practices hydraulic projects that include water crossing structures, and associated activities and maintenance;

(b) Harvesting, final and intermediate;

(c) Precommercial thinning;

(d) Reforestation;

(e) Fertilization;

(f) Prevention and suppression of diseases and insects;

(g) Salvage of trees; and

(h) Brush control.

"Forest practice" shall not include preparatory work such as tree marking, surveying and road flagging, and removal or harvesting of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber, or public resources.

(17) "Forest practices rules" means any rules adopted pursuant to RCW 76.09.040.

(18) "Forest road," as it applies to the operation of the road maintenance and abandonment plan element of the forest practices rules on small forest landowners, means a road or road segment that crosses land that meets the definition of forest land, but excludes residential access roads.

(19) "Forest trees" does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than fifteen years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees, but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

(20) "Forests and fish report" means the forests and fish report to the board dated April 29, 1999.

(21) "Operator" means any person engaging in forest practices except an employee with wages as his or her sole compensation.

(22) "Person" means any individual, partnership, private, public, or municipal corporation, county, the department or other state or local governmental entity, or association of individuals of whatever nature.

(23) "Public resources" means water, fish and wildlife, and in addition shall mean capital improvements of the state or its political subdivisions.

(24) "Small forest landowner" has the same meaning as defined in RCW 76.09.450.

(25) "Timber" means forest trees, standing or down, of a commercial species, including Christmas trees. However, "timber" does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

(26) "Timber owner" means any person having all or any part of the legal interest in timber. Where such timber is subject to a contract of sale, "timber owner" shall mean the contract purchaser.

(27) "Unconfined channel migration zone" means the area within which the active channel of an unconfined stream is prone to move and where the movement would result in a potential near-term loss of riparian forest adjacent to the stream. Sizeable islands with productive timber may exist within the zone.

(28) "Unconfined stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex floodplain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement.

(29) "Forest practices hydraulic project" means a hydraulic project, as defined under RCW 77.55.011, that requires a forest practices application or notification under this chapter.

(30) "Fill" means the placement of earth material or aggregate for road or landing construction or other similar activities.

NEW SECTION. Sec. 213. A new section is added to chapter 43.21C RCW to read as follows:

The incorporation of fish protection standards adopted under chapter 77.55 RCW into the forest practices rules as required under RCW 76.09.040(3) is exempt from compliance with this chapter.

NEW SECTION. Sec. 214. (1) The departments of natural resources and fish and wildlife must jointly provide a report to the appropriate committees of the legislature containing findings and any recommendations relating to the regulatory integration of hydraulic projects and forest practices as provided in this act, including:

(a) Progress made in implementing the integration required under this act, including rule incorporation and development of forest practices board manual guidance;

(b) An update on and potential for permitting efficiencies in addition to the integration required under this act;

(c) The process for and outcomes from review of forest practices applications that include forest practices hydraulic projects by the department of fish and wildlife; and

(d) Compliance monitoring for forest practices hydraulic projects through the review processes provided under WAC 222-08-160 as it existed on the effective date of this section.

(2) The departments of natural resources and fish and wildlife must provide an initial report by September 1, 2014, and a second report by September 1, 2016.

(3) This section expires December 31, 2016.

NEW SECTION. Sec. 215. Sections 202 and 205 of this act take effect on the date the forest practices board incorporates fish protection standards adopted under chapter 77.55 RCW into the forest practices rules and approves technical guidance as required under RCW 76.09.040. The department of natural resources must provide written notice of the effective date of these sections to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department of natural resources.

NEW SECTION. Sec. 216. Nothing in this act affects any rules, processes, or procedures of the department of fish and wildlife and the department of natural resources existing on the effective date of this section that provide for regulatory integration of hydraulic projects and forest practices for projects in nonfish-bearing waters.

NEW SECTION. Sec. 217. Nothing in this act authorizes the department of fish and wildlife to assume authority over approval, disapproval, conditioning, or enforcement of applications or notifications submitted under chapter 76.09 RCW.

NEW SECTION. Sec. 218. Nothing in this act affects the jurisdiction or other authority of a federally recognized Indian tribe within the boundary of its reservation or on other tribally owned lands.

NEW SECTION. Sec. 219. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

### PART THREE

#### State Environmental Policy Act and Local Development Regulations

NEW SECTION. Sec. 301. (1) The legislature recognizes that the rule-based categorical exemption thresholds to chapter 43.21C RCW, found in WAC 197-11-800, have not been updated in

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recent years, and should be reviewed in light of the increased environmental protections in place under chapters 36.70A and 90.58 RCW, and other laws. It is the intent of the legislature to direct the department of ecology to conduct two phases of rulemaking over the next two years to increase the thresholds for these categorical exemptions.

(2) By December 31, 2012, the department of ecology shall increase the rule-based categorical exemptions to chapter 43.21C RCW found in WAC 197-11-800 and update the environmental checklist found in WAC 197-11-960. In updating the categorical exemptions, the department of ecology must:

(a) At a minimum, increase the existing maximum threshold levels for the following project types:

(i) The construction or location of single-family residential developments;

(ii) The construction or location of multifamily residential developments;

(iii) The construction of an agricultural structure, other than a feed lot, that is similar to the following: A barn, a loafing shed, a farm equipment storage building, or a produce storing or packing structure;

(iv) The construction of the following, including any associated parking areas or facilities: An office, a school, a commercial building, a recreational building, a service building, or a storage building;

(v) Landfilling or excavation activities; and

(vi) The installation of an electric facility, lines, equipment, or appurtenances, other than substations.

(b) Establish maximum exemption levels for action types that differ based on whether the project is proposed to occur in:

(i) An incorporated city;

(ii) An unincorporated area within an urban growth area;

(iii) An unincorporated area outside of an urban growth area but within a county planning under chapter 36.70A RCW; or

(iv) An unincorporated area within a county not planning under chapter 36.70A RCW.

(c) In updating the environmental checklist found in WAC 197-11-960, the department of ecology shall:

(i) Improve efficiency of the environmental checklist; and

(ii) Not include any new subjects into the scope of the checklist, including climate change and greenhouse gases.

(d) Until the completion of the rule making required under this section, a city or county may apply the highest categorical exemption levels authorized under WAC 197-11-800 to any action, regardless if the city or county with jurisdiction has exercised its authority to raise the exemption levels above the established minimums, unless the city or county with jurisdiction passes an ordinance or resolution that lowers the exemption levels to a level below the allowed maximum but not less than the default minimum levels detailed in WAC 197-11-800.

(3)(a) By December 31, 2013, the department of ecology shall:

(i) Update, but not decrease, the thresholds for all other project actions not specified in subsection (2) of this section;

(ii) Propose methods for integrating the state environmental policy act process with provisions of the growth management act, chapter 36.70A RCW, including consideration of ways to revise WAC 197-11-210 through 197-11-232 to further the goals of RCW 43.21C.240; and

(iii) Create categorical exemptions for minor code amendments for which review under chapter 43.21C RCW would not be required because they do not lessen environmental protection.

(b) During this process, the department of ecology may also review and update the thresholds resulting from the 2012 rule-making process outlined in subsection (2) of this section.

(4)(a) The department of ecology shall convene an advisory committee consisting of members representing, at minimum, cities, counties, business interests, environmental interests, agricultural interests, cultural resources interests, state agencies, and tribal governments to:

(i) Assist in updating the environmental checklist and updating the thresholds for other project actions for both rule-making processes under subsections (2) and (3) of this section;

(ii) Ensure that state agencies and other interested parties can receive notice about projects of interest through notice under chapter 43.21C RCW and means other than chapter 43.21C RCW; and

(iii) Ensure that federally recognized tribes receive notice about projects that impact tribal interests through notice under chapter 43.21C RCW and means other than chapter 43.21C RCW.

(b) Advisory committee members must have direct experience with the implementation or application of the state environmental policy act.

(5) This section expires July 31, 2014.

**Sec. 302.** RCW 43.21C.031 and 1995 c 347 s 203 are each amended to read as follows:

(1) An environmental impact statement (the detailed statement required by RCW 43.21C.030(2)(c)) shall be prepared on proposals for legislation and other major actions having a probable significant, adverse environmental impact. The environmental impact statement may be combined with the recommendation or report on the proposal or issued as a separate document. The substantive decisions or recommendations shall be clearly identifiable in the combined document. Actions categorically exempt under RCW 43.21C.110(1)(a) and section 307 of this act do not require environmental review or the preparation of an environmental impact statement under this chapter. ~~((In a county, city, or town planning under RCW 36.70A.040, a planned action, as provided for in subsection (2) of this section, does not require a threshold determination or the preparation of an environmental impact statement under this chapter, but is subject to environmental review and mitigation as provided in this chapter.))~~

(2) An environmental impact statement is required to analyze only those probable adverse environmental impacts which are significant. Beneficial environmental impacts may be discussed. The responsible official shall consult with agencies and the public to identify such impacts and limit the scope of an environmental impact statement. The subjects listed in RCW 43.21C.030(2)(c) need not be treated as separate sections of an environmental impact statement. Discussions of significant short-term and long-term environmental impacts, significant irrevocable commitments of natural resources, significant alternatives including mitigation measures, and significant environmental impacts which cannot be mitigated should be consolidated or included, as applicable, in those sections of an environmental impact statement where the responsible official decides they logically belong.

((2)(a) For purposes of this section, a planned action means one or more types of project action that:

(i) Are designated planned actions by an ordinance or resolution adopted by a county, city, or town planning under RCW 36.70A.040;

(ii) Have had the significant impacts adequately addressed in an environmental impact statement prepared in conjunction with (A) a comprehensive plan or subarea plan adopted under chapter 36.70A RCW, or (B) a fully contained community, a master planned resort, a master planned development, or a phased project;

(iii) Are subsequent or implementing projects for the proposals listed in (a)(ii) of this subsection;

(iv) Are located within an urban growth area, as defined in RCW 36.70A.030;

(v) Are not essential public facilities, as defined in RCW

36.70A.200; and

(vi) Are consistent with a comprehensive plan adopted under chapter 36.70A RCW.

(b) A county, city, or town shall limit planned actions to certain types of development or to specific geographical areas that are less extensive than the jurisdictional boundaries of the county, city, or town and may limit a planned action to a time period identified in the environmental impact statement or the ordinance or resolution adopted under this subsection.)

**NEW SECTION. Sec. 303.** A new section is added to chapter 43.21C RCW to read as follows:

(1) For purposes of this chapter, a planned action means one or more types of development or redevelopment that meet the following criteria:

(a) Are designated as planned actions by an ordinance or resolution adopted by a county, city, or town planning under RCW 36.70A.040;

(b) Have had the significant impacts adequately addressed in an environmental impact statement under the requirements of this chapter in conjunction with, or to implement, a comprehensive plan or subarea plan adopted under chapter 36.70A RCW, or a fully contained community, a master planned resort, a master planned development, or a phased project;

(c) Have had project level significant impacts adequately addressed in an environmental impact statement unless the impacts are specifically deferred for consideration at the project level pursuant to subsection (3)(b) of this section;

(d) Are subsequent or implementing projects for the proposals listed in (b) of this subsection;

(e) Are located within an urban growth area designated pursuant to RCW 36.70A.110;

(f) Are not essential public facilities, as defined in RCW 36.70A.200, unless an essential public facility is accessory to or part of a residential, office, school, commercial, recreational, service, or industrial development that is designated a planned action under this subsection; and

(g) Are consistent with a comprehensive plan or subarea plan adopted under chapter 36.70A RCW.

(2) A county, city, or town shall define the types of development included in the planned action and may limit a planned action to:

(a) A specific geographic area that is less extensive than the jurisdictional boundaries of the county, city, or town; or

(b) A time period identified in the ordinance or resolution adopted under this subsection.

(3)(a) A county, city, or town shall determine during permit review whether a proposed project is consistent with a planned action ordinance adopted by the jurisdiction. To determine project consistency with a planned action ordinance, a county, city, or town may utilize a modified checklist pursuant to the rules adopted to implement RCW 43.21C.110, a form that is designated within the planned action ordinance, or a form contained in agency rules adopted pursuant to RCW 43.21C.120.

(b) A county, city, or town is not required to make a threshold determination and may not require additional environmental review, for a proposal that is determined to be consistent with the development or redevelopment described in the planned action ordinance, except for impacts that are specifically deferred to the project level at the time of the planned action ordinance's adoption. At least one community meeting must be held before the notice is issued for the planned action ordinance. Notice for the planned action and notice of the community meeting required by this subsection (3)(b) must be mailed or otherwise verifiably provided to: (i) All affected federally recognized tribal governments; and (ii) agencies with jurisdiction over the future development anticipated for the planned action. The determination of consistency, and the adequacy of any environmental review that was specifically

deferred, are subject to the type of administrative appeal that the county, city, or town provides for the proposal itself consistent with RCW 36.70B.060.

(4) For a planned action ordinance that encompasses the entire jurisdictional boundary of a county, city, or town, at least one community meeting must be held before the notice is issued for the planned action ordinance. Notice for the planned action ordinance and notice of the community meeting required by this subsection must be mailed or otherwise verifiably provided to:

(a) All property owners of record within the county, city, or town;

(b) All affected federally recognized tribal governments; and

(c) All agencies with jurisdiction over the future development anticipated for the planned action.

**Sec. 304.** RCW 43.21C.229 and 2003 c 298 s 1 are each amended to read as follows:

(1) In order to accommodate infill development and thereby realize the goals and policies of comprehensive plans adopted according to chapter 36.70A RCW, a city or county planning under RCW 36.70A.040 is authorized by this section to establish categorical exemptions from the requirements of this chapter. An exemption adopted under this section applies even if it differs from the categorical exemptions adopted by rule of the department under RCW 43.21C.110(1)(a). An exemption may be adopted by a city or county under this section if it meets the following criteria:

(a) It categorically exempts government action related to development (~~(that is new residential or mixed-use development)~~) proposed to fill in an urban growth area, designated according to RCW 36.70A.110, where current density and intensity of use in the area is lower than called for in the goals and policies of the applicable comprehensive plan and the development is either:

(i) Residential development;

(ii) Mixed-use development; or

(iii) Commercial development up to sixty-five thousand square feet, excluding retail development;

(b) It does not exempt government action related to development that is inconsistent with the applicable comprehensive plan or would exceed the density or intensity of use called for in the goals and policies of the applicable comprehensive plan; ~~(and)~~

(c) The local government considers the specific probable adverse environmental impacts of the proposed action and determines that these specific impacts are adequately addressed by the development regulations or other applicable requirements of the comprehensive plan, subarea plan element of the comprehensive plan, planned action ordinance, or other local, state, or federal rules or laws; and

(d)(i) The city or county's applicable comprehensive plan was previously subjected to environmental analysis through an environmental impact statement under the requirements of this chapter prior to adoption; or

(ii) The city or county has prepared an environmental impact statement that considers the proposed use or density and intensity of use in the area proposed for an exemption under this section.

(2) Any categorical exemption adopted by a city or county under this section shall be subject to the rules of the department adopted according to RCW 43.21C.110(1)(a) that provide exceptions to the use of categorical exemptions adopted by the department.

**NEW SECTION. Sec. 305.** A new section is added to chapter 43.21C RCW to read as follows:

(1) A county, city, or town may recover its reasonable expenses of preparation of a nonproject environmental impact statement prepared under RCW 43.21C.229 and section 303 of this act:

(a) Through access to financial assistance under RCW 36.70A.490;

(b) With funding from private sources; and

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(c) By the assessment of fees consistent with the requirements and limitations of this section.

(2)(a) A county, city, or town is authorized to assess a fee upon subsequent development that will make use of and benefit from: (i) The analysis in an environmental impact statement prepared for the purpose of compliance with section 303 of this act regarding planned actions; or (ii) the reduction in environmental analysis requirements resulting from the exercise of authority under RCW 43.21C.229 regarding infill development.

(b) The amount of the fee must be reasonable and proportionate to the total expenses incurred by the county, city, or town in the preparation of the environmental impact statement.

(3) A county, city, or town assessing fees under subsection (2)(a) of this section must provide for a mechanism by which project proponents may either elect to utilize the environmental review completed by the lead agency and pay the fees under subsection (1) of this section or certify that they do not want the local jurisdiction to utilize the environmental review completed as a part of a planned action and therefore not be assessed any associated fees. Project proponents who choose this option may not make use of or benefit from the up-front environmental review prepared by the local jurisdiction.

(4) Prior to the collection of fees, the county, city, or town must enact an ordinance that establishes the total amount of expenses to be recovered through fees and provides objective standards for determining the fee amount to be imposed upon each development proposal proportionate to the impacts of each development and to the benefits accruing to each development from the nonproject environmental review. The ordinance must provide (a) a procedure by which an applicant who disagrees with whether the amount of the fee is correct, reasonable, or proportionate may pay the fee with the written stipulation "paid under protest"; and (b) if the county, city, or town provides for an administrative appeal of its decision on the project for which the fees are imposed, any dispute about the amount of the fees must be resolved in the same administrative appeals process. Any disagreement about the reasonableness, proportionality, or amount of the fees imposed upon a development may not be the basis for delay in issuance of a project permit for that development.

(5) The ordinance adopted under subsection (4) of this section must make information available about the amount of the expenses designated for recovery. When such expenses have been fully recovered, the county, city, or town may no longer assess a fee under this section.

(6) Any fees collected under this section from subsequent development may be used to reimburse funding received from private sources to conduct the environmental review.

(7) The city, county, or town shall refund fees collected where a court of competent jurisdiction determines that the environmental review conducted under section 303 of this act, regarding planned actions, or under RCW 43.21C.229, regarding infill development, was not sufficient to comply with the requirements of this chapter regarding the proposed development activity for which the fees were collected. The applicant and the city, county, or town may mutually agree to a partial refund or to waive the refund in the interest of resolving any dispute regarding compliance with this chapter.

**Sec. 306.** RCW 82.02.020 and 2010 c 153 s 3 are each amended to read as follows:

Except only as expressly provided in chapters 67.28, 81.104, and 82.14 RCW, the state preempts the field of imposing retail sales and use taxes and taxes upon parimutuel wagering authorized pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county, town, or other municipal subdivision shall have the right to impose taxes of that nature. Except as provided in RCW 64.34.440

and 82.02.050 through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. However, this section does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat. A local government shall not use such voluntary agreements for local off-site transportation improvements within the geographic boundaries of the area or areas covered by an adopted transportation program authorized by chapter 39.92 RCW. Any such voluntary agreement is subject to the following provisions:

(1) The payment shall be held in a reserve account and may only be expended to fund a capital improvement agreed upon by the parties to mitigate the identified, direct impact;

(2) The payment shall be expended in all cases within five years of collection; and

(3) Any payment not so expended shall be refunded with interest to be calculated from the original date the deposit was received by the county and at the same rate applied to tax refunds pursuant to RCW 84.69.100; however, if the payment is not expended within five years due to delay attributable to the developer, the payment shall be refunded without interest.

No county, city, town, or other municipal corporation shall require any payment as part of such a voluntary agreement which the county, city, town, or other municipal corporation cannot establish is reasonably necessary as a direct result of the proposed development or plat.

Nothing in this section prohibits cities, towns, counties, or other municipal corporations from collecting reasonable fees from an applicant for a permit or other governmental approval to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW, including reasonable fees that are consistent with RCW 43.21C.420(6) and section 305 of this act.

This section does not limit the existing authority of any county, city, town, or other municipal corporation to impose special assessments on property specifically benefited thereby in the manner prescribed by law.

Nothing in this section prohibits counties, cities, or towns from imposing or permits counties, cities, or towns to impose water, sewer, natural gas, drainage utility, and drainage system charges. However, no such charge shall exceed the proportionate share of such utility or system's capital costs which the county, city, or town can demonstrate are attributable to the property being charged. Furthermore, these provisions may not be interpreted to expand or contract any existing authority of counties, cities, or towns to impose such charges.

Nothing in this section prohibits a transportation benefit district from imposing fees or charges authorized in RCW 36.73.120 nor prohibits the legislative authority of a county, city, or town from approving the imposition of such fees within a transportation benefit district.

Nothing in this section prohibits counties, cities, or towns from imposing transportation impact fees authorized pursuant to chapter 39.92 RCW.

Nothing in this section prohibits counties, cities, or towns from requiring property owners to provide relocation assistance to tenants under RCW 59.18.440 and 59.18.450.

Nothing in this section limits the authority of counties, cities, or towns to implement programs consistent with RCW 36.70A.540, nor to enforce agreements made pursuant to such programs.

This section does not apply to special purpose districts formed and acting pursuant to Title 54, 57, or 87 RCW, nor is the authority conferred by these titles affected.

**NEW SECTION. Sec. 307.** A new section is added to chapter 43.21C RCW to read as follows:

The following nonproject actions are categorically exempt from the requirements of this chapter:

(1) Amendments to development regulations that are required to ensure consistency with an adopted comprehensive plan pursuant to RCW 36.70A.040, where the comprehensive plan was previously subjected to environmental review pursuant to this chapter and the impacts associated with the proposed regulation were specifically addressed in the prior environmental review;

(2) Amendments to development regulations that are required to ensure consistency with a shoreline master program approved pursuant to RCW 90.58.090, where the shoreline master program was previously subjected to environmental review pursuant to this chapter and the impacts associated with the proposed regulation were specifically addressed in the prior environmental review;

(3) Amendments to development regulations that, upon implementation of a project action, will provide increased environmental protection, limited to the following:

(a) Increased protections for critical areas, such as enhanced buffers or setbacks;

(b) Increased vegetation retention or decreased impervious surface areas in shoreline jurisdiction; and

(c) Increased vegetation retention or decreased impervious surface areas in critical areas;

(4) Amendments to technical codes adopted by a county, city, or town to ensure consistency with minimum standards contained in state law, including the following:

(a) Building codes required by chapter 19.27 RCW;

(b) Energy codes required by chapter 19.27A RCW; and

(c) Electrical codes required by chapter 19.28 RCW.

**NEW SECTION. Sec. 308.** A new section is added to chapter 43.21C RCW to read as follows:

(1) The lead agency for an environmental review under this chapter utilizing an environmental checklist developed by the department of ecology pursuant to RCW 43.21C.110 may identify within the checklist provided to applicants instances where questions on the checklist are adequately covered by a locally adopted ordinance, development regulation, land use plan, or other legal authority.

(2) If a lead agency identifies an instance as described in subsection (1) of this section, it still must consider whether the action has an impact on the particular element or elements of the environment in question.

(3) In instances where the locally adopted ordinance, development regulation, land use plan, or other legal authority provide the necessary information to answer a specific question, the lead agency must explain how the proposed project satisfies the underlying local legal authority.

(4) If the lead agency identifies instances where questions on the checklist are adequately covered by a locally adopted ordinance, development regulation, land use plan, or other legal authority, an applicant may still provide answers to any questions on the checklist.

(5) Nothing in this section authorizes a lead agency to ignore or delete a question on the checklist.

(6) Nothing in this section changes the standard for whether an environmental impact statement is required for an action that may have a probable significant, adverse environmental impact pursuant to RCW 43.21C.030.

(7) Nothing in this section affects the appeal provisions provided in this chapter.

(8) Nothing in this section modifies existing rules for determining the lead agency, as defined in WAC 197-11-922 through 197-11-948, nor does it modify agency procedures for complying with the state environmental policy act when an agency other than a local government is serving as the lead agency.

**Sec. 309.** RCW 36.70A.490 and 1995 c 347 s 115 are each amended to read as follows:

The growth management planning and environmental review fund is hereby established in the state treasury. Moneys may be placed in the fund from the proceeds of bond sales, tax revenues, budget transfers, federal appropriations, gifts, or any other lawful source. Moneys in the fund may be spent only after appropriation. Moneys in the fund shall be used to make grants or loans to local governments for the purposes set forth in RCW 43.21C.240, 43.21C.031, or 36.70A.500. Any payment of either principal or interest, or both, derived from loans made from this fund must be deposited into the fund.

**Sec. 310.** RCW 36.70A.500 and 1997 c 429 s 28 are each amended to read as follows:

(1) The department of ~~((community, trade, and economic development))~~ commerce shall provide management services for the growth management planning and environmental review fund created by RCW 36.70A.490. The department shall establish procedures for fund management. The department shall encourage participation in the grant or loan program by other public agencies. The department shall develop the grant or loan criteria, monitor the grant or loan program, and select grant or loan recipients in consultation with state agencies participating in the grant or loan program through the provision of grant or loan funds or technical assistance.

(2) A grant or loan may be awarded to a county or city that is required to or has chosen to plan under RCW 36.70A.040 and that is qualified pursuant to this section. The grant or loan shall be provided to assist a county or city in paying for the cost of preparing an environmental analysis under chapter 43.21C RCW, that is integrated with a comprehensive plan, subarea plan, plan element, countywide planning policy, development regulation, monitoring program, or other planning activity adopted under or implementing this chapter that:

(a) Improves the process for project permit review while maintaining environmental quality; or

(b) Encourages use of plans and information developed for purposes of complying with this chapter to satisfy requirements of other state programs.

(3) In order to qualify for a grant or loan, a county or city shall:

(a) Demonstrate that it will prepare an environmental analysis pursuant to chapter 43.21C RCW and subsection (2) of this section that is integrated with a comprehensive plan, subarea plan, plan element, countywide planning policy, development regulations, monitoring program, or other planning activity adopted under or implementing this chapter;

(b) Address environmental impacts and consequences, alternatives, and mitigation measures in sufficient detail to allow the analysis to be adopted in whole or in part by applicants for development permits within the geographic area analyzed in the plan;

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(c) Demonstrate that procedures for review of development permit applications will be based on the integrated plans and environmental analysis;

(d) Include mechanisms to monitor the consequences of growth as it occurs in the plan area and to use the resulting data to update the plan, policy, or implementing mechanisms and associated environmental analysis;

(e) Demonstrate substantial progress towards compliance with the requirements of this chapter. A county or city that is more than six months out of compliance with a requirement of this chapter is deemed not to be making substantial progress towards compliance; and

(f) Provide local funding, which may include financial participation by the private sector.

(4) In awarding grants or loans, the department shall give preference to proposals that include one or more of the following elements:

(a) Financial participation by the private sector, or a public/private partnering approach;

(b) Identification and monitoring of system capacities for elements of the built environment, and to the extent appropriate, of the natural environment;

(c) Coordination with state, federal, and tribal governments in project review;

(d) Furtherance of important state objectives related to economic development, protection of areas of statewide significance, and siting of essential public facilities;

(e) Programs to improve the efficiency and effectiveness of the permitting process by greater reliance on integrated plans and prospective environmental analysis;

(f) Programs for effective citizen and neighborhood involvement that contribute to greater likelihood that planning decisions can be implemented with community support; ~~((and))~~

(g) Programs to identify environmental impacts and establish mitigation measures that provide effective means to satisfy concurrency requirements and establish project consistency with the plans; or

(h) Environmental review that addresses the impacts of increased density or intensity of comprehensive plans, subarea plans, or receiving areas designated by a city or town under the regional transfer of development rights program in chapter 43.362 RCW.

(5) If the local funding includes funding provided by other state functional planning programs, including open space planning and watershed or basin planning, the functional plan shall be integrated into and be consistent with the comprehensive plan.

(6) State agencies shall work with grant or loan recipients to facilitate state and local project review processes that will implement the projects receiving grants or loans under this section.

**Sec. 311.** RCW 43.21C.110 and 1997 c 429 s 47 are each amended to read as follows:

It shall be the duty and function of the department of ecology:

(1) To adopt and amend ~~((hereafter))~~ rules of interpretation and implementation of this chapter, subject to the requirements of chapter 34.05 RCW, for the purpose of providing uniform rules and guidelines to all branches of government including state agencies, political subdivisions, public and municipal corporations, and counties. The proposed rules shall be subject to full public hearings requirements associated with rule ~~((promulgation))~~ adoption. Suggestions for modifications of the proposed rules shall be considered on their merits, and the department shall have the authority and responsibility for full and appropriate independent ~~((promulgation and))~~ adoption of rules, assuring consistency with this chapter as amended and with the preservation of protections afforded by this chapter. The rule-making powers authorized in

this section shall include, but shall not be limited to, the following phases of interpretation and implementation of this chapter:

(a) Categories of governmental actions which are not to be considered as potential major actions significantly affecting the quality of the environment, including categories pertaining to applications for water right permits pursuant to chapters 90.03 and 90.44 RCW. The types of actions included as categorical exemptions in the rules shall be limited to those types which are not major actions significantly affecting the quality of the environment. The rules shall provide for certain circumstances where actions which potentially are categorically exempt require environmental review. An action that is categorically exempt under the rules adopted by the department may not be conditioned or denied under this chapter.

(b) Rules for criteria and procedures applicable to the determination of when an act of a branch of government is a major action significantly affecting the quality of the environment for which a detailed statement is required to be prepared pursuant to RCW 43.21C.030.

(c) Rules and procedures applicable to the preparation of detailed statements and other environmental documents, including but not limited to rules for timing of environmental review, obtaining comments, data and other information, and providing for and determining areas of public participation which shall include the scope and review of draft environmental impact statements.

(d) Scope of coverage and contents of detailed statements assuring that such statements are simple, uniform, and as short as practicable; statements are required to analyze only reasonable alternatives and probable adverse environmental impacts which are significant, and may analyze beneficial impacts.

(e) Rules and procedures for public notification of actions taken and documents prepared.

(f) Definition of terms relevant to the implementation of this chapter including the establishment of a list of elements of the environment. Analysis of environmental considerations under RCW 43.21C.030(2) may be required only for those subjects listed as elements of the environment (or portions thereof). The list of elements of the environment shall consist of the "natural" and "built" environment. The elements of the built environment shall consist of public services and utilities (such as water, sewer, schools, fire and police protection), transportation, environmental health (such as explosive materials and toxic waste), and land and shoreline use (including housing, and a description of the relationships with land use and shoreline plans and designations, including population).

(g) Rules for determining the obligations and powers under this chapter of two or more branches of government involved in the same project significantly affecting the quality of the environment.

(h) Methods to assure adequate public awareness of the preparation and issuance of detailed statements required by RCW 43.21C.030(2)(c).

(i) To prepare rules for projects setting forth the time limits within which the governmental entity responsible for the action shall comply with the provisions of this chapter.

(j) Rules for utilization of a detailed statement for more than one action and rules improving environmental analysis of nonproject proposals and encouraging better interagency coordination and integration between this chapter and other environmental laws.

(k) Rules relating to actions which shall be exempt from the provisions of this chapter in situations of emergency.

(l) Rules relating to the use of environmental documents in planning and decision making and the implementation of the substantive policies and requirements of this chapter, including procedures for appeals under this chapter.

(m) Rules and procedures that provide for the integration of environmental review with project review as provided in RCW

43.21C.240. The rules and procedures shall be jointly developed with the department of ~~((community, trade, and economic development))~~ **commerce** and shall be applicable to the preparation of environmental documents for actions in counties, cities, and towns planning under RCW 36.70A.040. The rules and procedures shall also include procedures and criteria to analyze planned actions under ~~((RCW 43.21C.031(2)))~~ **section 303 of this act** and revisions to the rules adopted under this section to ensure that they are compatible with the requirements and authorizations of chapter 347, Laws of 1995, as amended by chapter 429, Laws of 1997. Ordinances or procedures adopted by a county, city, or town to implement the provisions of chapter 347, Laws of 1995 prior to the effective date of rules adopted under this subsection (1)(m) shall continue to be effective until the adoption of any new or revised ordinances or procedures that may be required. If any revisions are required as a result of rules adopted under this subsection (1)(m), those revisions shall be made within the time limits specified in RCW 43.21C.120.

(2) In exercising its powers, functions, and duties under this section, the department may:

(a) Consult with the state agencies and with representatives of science, industry, agriculture, labor, conservation organizations, state and local governments, and other groups, as it deems advisable; and

(b) Utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies, organizations, and individuals, in order to avoid duplication of effort and expense, overlap, or conflict with similar activities authorized by law and performed by established agencies.

(3) Rules adopted pursuant to this section shall be subject to the review procedures of chapter 34.05 RCW.

**Sec. 312.** RCW 43.21C.095 and 1983 c 117 s 5 are each amended to read as follows:

The rules ~~((promulgated))~~ **adopted** under RCW 43.21C.110 shall be accorded substantial deference in the interpretation of this chapter.

**Sec. 313.** RCW 90.48.260 and 2011 c 353 s 12 are each amended to read as follows:

(1) The department of ecology is hereby designated as the state water pollution control agency for all purposes of the federal clean water act as it exists on February 4, 1987, and is hereby authorized to participate fully in the programs of the act as well as to take all action necessary to secure to the state the benefits and to meet the requirements of that act. With regard to the national estuary program established by section 320 of that act, the department shall exercise its responsibility jointly with the Puget Sound partnership, created in RCW 90.71.210. The department of ecology may delegate its authority under this chapter, including its national pollutant discharge elimination permit system authority and duties regarding animal feeding operations and concentrated animal feeding operations, to the department of agriculture through a memorandum of understanding. Until any such delegation receives federal approval, the department of agriculture's adoption or issuance of animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives pertaining to water quality shall be accomplished after reaching agreement with the director of the department of ecology. Adoption or issuance and implementation shall be accomplished so that compliance with such animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives will achieve compliance with all federal and state water pollution control laws. The powers granted herein include, among others, and notwithstanding any other provisions of ~~((this chapter (90.48 RCW)))~~ or otherwise, the following:

(a) Complete authority to establish and administer a comprehensive state point source waste discharge or pollution

discharge elimination permit program which will enable the department to qualify for full participation in any national waste discharge or pollution discharge elimination permit system and will allow the department to be the sole agency issuing permits required by such national system operating in the state of Washington subject to the provisions of RCW 90.48.262(2). Program elements authorized herein may include, but are not limited to: (i) Effluent treatment and limitation requirements together with timing requirements related thereto; (ii) applicable receiving water quality standards requirements; (iii) requirements of standards of performance for new sources; (iv) pretreatment requirements; (v) termination and modification of permits for cause; (vi) requirements for public notices and opportunities for public hearings; (vii) appropriate relationships with the secretary of the army in the administration of his or her responsibilities which relate to anchorage and navigation, with the administrator of the environmental protection agency in the performance of his or her duties, and with other governmental officials under the federal clean water act; (viii) requirements for inspection, monitoring, entry, and reporting; (ix) enforcement of the program through penalties, emergency powers, and criminal sanctions; (x) a continuing planning process; and (xi) user charges.

(b) The power to establish and administer state programs in a manner which will ~~((insure))~~ **ensure** the procurement of moneys, whether in the form of grants, loans, or otherwise; to assist in the construction, operation, and maintenance of various water pollution control facilities and works; and the administering of various state water pollution control management, regulatory, and enforcement programs.

(c) The power to develop and implement appropriate programs pertaining to continuing planning processes, area-wide waste treatment management plans, and basin planning.

~~((2))~~ (2) The governor shall have authority to perform those actions required of him or her by the federal clean water act.

~~((2))~~ (3) By July 31, 2012, the department shall:

(a) Reissue without modification and for a term of one year any national pollutant discharge elimination system municipal storm water general permit applicable to western Washington municipalities first issued on January 17, 2007; and

(b) Issue an updated national pollutant discharge elimination system municipal storm water general permit applicable to western Washington municipalities for any permit first issued on January 17, 2007. An updated permit issued under this subsection shall become effective beginning August 1, 2013.

(i) Provisions of the updated permit issued under (b) of this subsection relating to new requirements for low-impact development and review and revision of local development codes, rules, standards, or other enforceable documents to incorporate low-impact development principles must be implemented simultaneously. These requirements may go into effect no earlier than December 31, 2016, or the time of the scheduled update under RCW 36.70A.130(5), as existing on the effective date of this section, whichever is later.

(ii) Provisions of the updated permit issued under (b) of this subsection related to increased catch basin inspection and illicit discharge detection frequencies and application of new storm water controls to projects smaller than one acre may go into effect no earlier than December 31, 2016, or the time of the scheduled update under RCW 36.70A.130(5), as existing on the effective date of this section, whichever is later.

(4) By July 31, 2012, the department shall:

(a) Reissue without modification and for a term of two years any national pollutant discharge elimination system municipal storm water general permit applicable to eastern Washington municipalities first issued on January 17, 2007; and

(b) Issue an updated national pollutant discharge elimination

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system municipal storm water general permit for any permit first issued on January 17, 2007, applicable to eastern Washington municipalities. An updated permit issued under this subsection becomes effective August 1, 2014."

Senator Hargrove spoke in favor of adoption of the striking amendment.

MOTION

Senator Ericksen moved that the following amendment by Senator Ericksen to the striking amendment adopted:

On page 2, line 9, after "work", insert "at or below the ordinary high water line"

On page 9, line 3, after "June 30," strike "2017" and insert "2015"

On page 9, line 21, after "June 30," strike "2017" and insert "2015"

Renumber the remaining sections consecutively and correct any internal references accordingly.

Senator Ericksen spoke in favor of adoption of the amendment to the striking amendment.

Senators Hargrove and Schoesler spoke against adoption of the amendment to the striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Ericksen to the striking amendment on page 2, line 9 to Engrossed Substitute Senate Bill No. 6406.

The motion by Senator Ericksen failed and the amendment to the striking amendment was not adopted by voice vote.

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Hargrove and Schoesler to Engrossed Substitute Senate Bill No. 6406.

The motion by Senator Hargrove carried and the striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, beginning on line 2 of the title, after "resources;" strike the remainder of the title and insert "amending RCW 77.55.021, 77.55.151, 77.55.231, 76.09.040, 76.09.050, 76.09.150, 76.09.065, 76.09.470, 76.09.030, 43.21C.031, 43.21C.229, 82.02.020, 36.70A.490, 36.70A.500, 43.21C.110, 43.21C.095, and 90.48.260; reenacting and amending RCW 77.55.011, 76.09.060, and 76.09.020; adding new sections to chapter 77.55 RCW; adding a new section to chapter 76.09 RCW; adding a new section to chapter 43.30 RCW; adding new sections to chapter 43.21C RCW; creating new sections; prescribing penalties; providing a contingent effective date; and providing expiration dates."

MOTION

On motion of Senator Hargrove, the rules were suspended, Second Engrossed Substitute Senate Bill No. 6406 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Hargrove and Nelson spoke in favor of passage of the bill.

Senator Chase spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Second Engrossed Substitute Senate Bill No. 6406.

The Secretary called the roll on the final passage of Second Engrossed Substitute Senate Bill No. 6406 and the bill passed the Senate by the following vote: Yeas, 35; Nays, 14; Absent, 0; Excused, 0.

Voting yea: Senators Becker, Benton, Carrell, Delvin, Eide, , Fain, Frockt, Hargrove, Hatfield, Haugen, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Litzow, Morton, Nelson, Parlette, Pflug, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Swecker, Tom and Zarelli

Voting nay: Senators Baumgartner, Brown, Chase, Conway, Ericksen, Fraser, Harper, Kline, Kohl-Welles, McAuliffe, Murray, Padden, Prentice and Pridemore

Excused: Senators Hewitt and Stevens

SECOND ENGROSSED SUBSTITUTE SENATE BILL NO. 6406, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

At 6:37 p.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

The Senate was called to order at 8:58 p.m. by President Owen.

MOTION

On motion of Senator Eide the rules were suspended and, pursuant to Rule 48, the Committee on Ways & Means was relieved of further consideration of Senate Bill No. 6623 and the Committee on Rules was relieved of further consideration of Senate Bill No. 6392 and the measures were placed on today's calendar without objection.

MOTION

On motion of Senator Eide, the Senate reverted to the fourth order of business.

MESSAGE FROM THE HOUSE

April 10, 2012

MR. PRESIDENT:

The House has passed HOUSE BILL NO. 2834. and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

On motion of Senator Eide, the Senate advanced to the fifth order of business.

SUPPLEMENTAL INTRODUCTION AND FIRST READING

SB 6640 by Senators Roach, Benton, Chase, Swecker, Prentice, Fain, Hatfield, Hill, Frockt, Holmquist Newbry, Ericksen, Keiser and Shin

AN ACT Relating to prohibiting a child custody award to a suspect in an active homicide investigation; amending RCW 13.34.132, 26.09.191, and 26.10.160; adding a new section to

chapter 13.34 RCW; adding a new section to chapter 26.09 RCW; and creating a new section.

Referred to Committee on Human Services & Corrections.

SCR 8412 by Senators Brown and Parlette

Returning bills to their house of origin.

SCR 8413 by Senators Brown and Parlette

Adjourning SINE DIE.

#### MOTION

On motion of Senator Eide, the measures listed on the Supplemental First Reading and Introduction report were referred to the committees as designed with the exception of Senate Concurrent Resolution No. 8412 and Senate Concurrent Resolution No. 8413 which were placed on the second reading calendar under suspension of the rules.

#### SECOND SUPPLEMENTAL INTRODUCTION AND FIRST READING OF HOUSE BILLS

HB 2834 by Representatives Alexander, Springer and Angel

AN ACT Relating to providing cost savings for local governments by reducing a limited number of reporting requirements; amending RCW 35.22.620, 36.27.020, and 36.70A.180; adding a new section to chapter 43.41 RCW; and repealing RCW 35.21.687 and 36.34.137.

#### MOTION

On motion of Senator Eide, the measure listed on the Second Supplemental Introduction and First Reading report the bill was placed on the second reading calendar under suspension of the rules without objection.

#### MOTION

On motion of Senator Eide, the Senate advanced to the sixth order of business.

#### SECOND READING

HOUSE BILL NO. 2824, by Representatives Eddy and Hunter

Addressing comprehensive funding for education by developing a plan for full funding and by freeing certain existing revenues for support of the basic education program.

The measure was read the second time.

#### MOTION

Senator Murray moved that the following committee striking amendment by the Committee on Ways & Means be adopted:

Strike everything after the enacting clause and insert the following:

"**NEW SECTION. Sec. 1.** (1) Legislation enacted in 2009 (chapter 548, Laws of 2009) and in 2010 (chapter 236, Laws of

2010) revised the definition of the program of basic education, established new methods for distributing state funds to school districts to support this program of basic education, and provided an outline of specific enhancements to the program of basic education that are required to be implemented by 2018. In order to meet the required deadlines to implement full funding of the enhancements, the joint task force in section 2 of this act is created to develop and recommend options for a permanent funding mechanism.

(2) Initiative Measure No. 728 (chapter 3, Laws of 2001) dedicated a portion of state revenues to fund class size reductions and other education improvements. Because class size reductions and similar improvements are incorporated in the reforms that were enacted in chapter 548, Laws of 2009, and chapter 236, Laws of 2010, and that are being incrementally implemented through 2018, Initiative Measure No. 728 is repealed in order to make these dedicated revenues available for implementation of basic education reform and to facilitate the funding reform recommendations of the joint task force in section 2 of this act.

(3) Nothing in this act alters or amends the elements included in the school district levy base set forth in RCW 84.52.0531.

**NEW SECTION. Sec. 2.** (1) The joint task force on education funding is established. The task force shall make recommendations on how the legislature can meet the requirements outlined in chapter 548, Laws of 2009 and chapter 236, Laws of 2010. In particular, the task force shall develop a proposal for a reliable and dependable funding mechanism to support basic education programs. At a minimum, the proposed funding mechanism must support full implementation of the programmatic enhancements required in chapter 548, Laws of 2009, and chapter 236, Laws of 2010, including full-day kindergarten; reduced K-3 class size; increased allocations for maintenance, supplies, and operating costs; and a new pupil transportation formula.

(2)(a) The joint task force on education funding shall consist of the following members:

(i) Eight legislators, with two members from each of the two largest caucuses of the senate appointed by the president of the senate and two members from each of the two largest caucuses of the house of representatives appointed by the speaker of the house of representatives; and

(ii) Three individuals, to be appointed by the governor.

(b) The task force may recommend multiple options, but shall recommend one preferred alternative, including an outline of necessary implementing legislation. Should the task force recommend an option to fully fund the program of basic education with no new revenues, the task force must identify what areas already in the budget would be eliminated or reduced.

(c) The task force shall be staffed by the house of representatives office of program research, senate committee services, and the office of financial management, with assistance from the Washington state institute for public policy and other agencies as necessary.

(3) The task force shall submit a final report to the legislature by December 31, 2012.

**Sec. 3.** RCW 28A.150.380 and 2009 c 548 s 110 and 2009 c 479 s 16 are each reenacted and amended to read as follows:

(1) The state legislature shall, at each regular session in an odd-numbered year, appropriate for the current use of the common schools such amounts as needed for state support to school districts during the ensuing biennium for the program of basic education under RCW 28A.150.200.

(2) In addition to those state funds provided to school districts for basic education, the legislature may appropriate funds to be distributed to school districts for other factors and for other special programs to enhance or enrich the program of basic education.

((3) The state legislature shall also, at each regular session in an odd-numbered year, appropriate from the general fund and

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education construction fund for the purposes of and in accordance with the provisions of the student achievement act during the ensuing biennium.)

**Sec. 4.** RCW 28A.600.405 and 2007 c 355 s 4 are each amended to read as follows:

(1) For purposes of this section and RCW 28B.50.534, "eligible student" means a student who has completed all state and local high school graduation requirements except the certificate of academic achievement under RCW 28A.655.061 or the certificate of individual achievement under RCW 28A.155.045, who is less than age twenty-one as of September 1st of the academic year the student enrolls at a community and technical college under this section, and who meets the following criteria:

(a) Receives a level 2 (basic) score on the reading and writing content areas of the high school (~~Washington assessment of student learning~~) statewide student assessment;

(b) Has not successfully met state standards on a retake of the assessment or an alternative assessment;

(c) Has participated in assessment remediation; and

(d) Receives a recommendation to enroll in courses or a program of study made available under RCW 28B.50.534 from his or her high school principal.

(2) An eligible student may enroll in courses or a program of study made available by a community or technical college participating in the pilot program created under RCW 28B.50.534 for the purpose of obtaining a high school diploma.

(3) For eligible students in courses or programs delivered directly by the community or technical college participating in the pilot program under RCW 28B.50.534 and only for enrollment in courses that lead to a high school diploma, the superintendent of public instruction shall transmit to the colleges participating in the pilot program an amount per each full-time equivalent college student at statewide uniform rates. The amount shall be the sum of (a), (b), and (c) ~~(, and (d))~~ of this subsection, as applicable.

(a) The superintendent shall separately calculate and allocate moneys appropriated for basic education under RCW 28A.150.260 for purposes of making payments under this section. The calculations and allocations shall be based upon the estimated statewide annual average per full-time equivalent high school student allocations under RCW 28A.150.260, excluding small high school enhancements, and applicable rules adopted under chapter 34.05 RCW.

(b) The superintendent shall allocate an amount equal to the per funded student state allocation for the learning assistance program under chapter 28A.165 RCW for each full-time equivalent college student or a pro rata amount for less than full-time enrollment.

(c) ~~(The~~ superintendent shall allocate an amount equal to the per full-time equivalent student allocation for the student achievement program under RCW 28A.505.210 for each full-time equivalent college student or a pro rata amount for less than full-time enrollment.

(d)) For eligible students who meet eligibility criteria for the state transitional bilingual instruction program under chapter 28A.180 RCW, the superintendent shall allocate an amount equal to the per student state allocation for the transitional bilingual instruction program or a pro rata amount for less than full-time enrollment.

(4) The superintendent may adopt rules establishing enrollment reporting, recordkeeping, and accounting requirements necessary to ensure accountability for the use of basic education, learning assistance, and transitional bilingual program funds under this section for the pilot program created under RCW 28B.50.534.

(5) All school districts in the geographic area of the two community and technical colleges selected pursuant to section 8, chapter 355, Laws of 2007 to participate in the pilot program shall

provide information about the high school completion option under RCW 28B.50.534 to students in grades ten, eleven, and twelve and the parents or guardians of those students.

**Sec. 5.** RCW 43.135.045 and 2011 1st sp.s. c 50 s 950 are each amended to read as follows:

The education construction fund is hereby created in the state treasury.

(1) Funds may be appropriated from the education construction fund exclusively for common school construction or higher education construction. During the 2007-2009 fiscal biennium, funds may also be used for higher education facilities preservation and maintenance. During the 2009-2011 and 2011-2013 fiscal biennia, the legislature may transfer from the education construction fund to the state general fund such amounts as reflect the excess fund balance of the fund.

(2) Funds may be appropriated for any other purpose only if approved by a two-thirds vote of each house of the legislature and if approved by a vote of the people at the next general election. An appropriation approved by the people under this subsection shall result in an adjustment to the state expenditure limit only for the fiscal period for which the appropriation is made and shall not affect any subsequent fiscal period.

(3) ~~(Funds for the student achievement program in RCW 28A.505.210 and 28A.505.220 shall be appropriated to the superintendent of public instruction strictly for distribution to school districts to meet the provisions set out in the student achievement act. Allocations shall be made on an equal per full-time equivalent student basis to each school district.~~

(4)) After July 1, 2010, the state treasurer shall transfer one hundred two million dollars from the general fund to the education ~~(construction fund)~~ legacy trust account by June 30th of each year.

**Sec. 6.** RCW 67.70.340 and 2010 1st sp.s. c 27 s 4 are each amended to read as follows:

(1) The legislature recognizes that creating a shared game lottery could result in less revenue being raised by the existing state lottery ticket sales. The legislature further recognizes that the fund most impacted by this potential event is the Washington opportunity pathways account. Therefore, it is the intent of the legislature to use some of the proceeds from the shared game lottery to make up the difference that the potential state lottery revenue loss would have on the Washington opportunity pathways account. The legislature further intends to use some of the proceeds from the shared game lottery to fund programs and services related to problem and pathological gambling.

(2) The Washington opportunity pathways account is expected to receive one hundred two million dollars annually from state lottery games other than the shared game lottery. For fiscal year 2011 and thereafter, if the amount of lottery revenues earmarked for the Washington opportunity pathways account is less than one hundred two million dollars, the commission, after making the transfer required under subsection (3) of this section, must transfer sufficient moneys from revenues derived from the shared game lottery into the Washington opportunity pathways account to bring the total revenue up to one hundred two million dollars.

(3)(a) The commission shall transfer, from revenue derived from the shared game lottery, to the problem gambling account created in RCW 43.20A.892, an amount equal to the percentage specified in (b) of this subsection of net receipts. For purposes of this subsection, "net receipts" means the difference between (i) revenue received from the sale of lottery tickets or shares and revenue received from the sale of shared game lottery tickets or shares; and (ii) the sum of payments made to winners.

(b) In fiscal year 2006, the percentage to be transferred to the problem gambling account is one-tenth of one percent. In fiscal year 2007 and subsequent fiscal years, the percentage to be

transferred to the problem gambling account is thirteen one-hundredths of one percent.

(4) The commission shall transfer the remaining net revenues, if any, derived from the shared game lottery "Powerball" authorized in RCW 67.70.044(1) after the transfers pursuant to this section into the state general fund for ~~((the student achievement program under RCW 28A.505.229))~~ support for the program of basic education under RCW 28A.150.200.

(5) The remaining net revenues, if any, in the shared game lottery account after the transfers pursuant to this section shall be deposited into the Washington opportunity pathways account.

**Sec. 7.** RCW 83.100.230 and 2010 1st sp.s. c 37 s 953 are each amended to read as follows:

The education legacy trust account is created in the state treasury. Money in the account may be spent only after appropriation. Expenditures from the account may be used only for ~~((deposit into the student achievement fund))~~ support of the common schools, for transfer to the common school construction account for state assistance to public school facilities construction projects, and for expanding access to higher education through funding for new enrollments and financial aid, and other educational improvement efforts. ~~((During the 2009-2011 fiscal biennium, moneys in the account may also be transferred into the state general fund.))~~

**Sec. 8.** RCW 84.52.0531 and 2010 c 237 s 1 and 2010 c 99 s 11 are each reenacted and amended to read as follows:

The maximum dollar amount which may be levied by or for any school district for maintenance and operation support under the provisions of RCW 84.52.053 shall be determined as follows:

(1) For excess levies for collection in calendar year 1997, the maximum dollar amount shall be calculated pursuant to the laws and rules in effect in November 1996.

(2) For excess levies for collection in calendar year 1998 and thereafter, the maximum dollar amount shall be the sum of (a) plus or minus (b), (c), and (d) of this subsection minus (e) of this subsection:

(a) The district's levy base as defined in subsections (3) and (4) of this section multiplied by the district's maximum levy percentage as defined in subsection (6) of this section;

(b) For districts in a high/nonhigh relationship, the high school district's maximum levy amount shall be reduced and the nonhigh school district's maximum levy amount shall be increased by an amount equal to the estimated amount of the nonhigh payment due to the high school district under RCW 28A.545.030(3) and 28A.545.050 for the school year commencing the year of the levy;

(c) Except for nonhigh districts under (d) of this subsection, for districts in an interdistrict cooperative agreement, the nonresident school district's maximum levy amount shall be reduced and the resident school district's maximum levy amount shall be increased by an amount equal to the per pupil basic education allocation included in the nonresident district's levy base under subsection (3) of this section multiplied by:

(i) The number of full-time equivalent students served from the resident district in the prior school year; multiplied by:

(ii) The serving district's maximum levy percentage determined under subsection (6) of this section; increased by:

(iii) The percent increase per full-time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year divided by fifty-five percent;

(d) The levy bases of nonhigh districts participating in an innovation academy cooperative established under RCW 28A.340.080 shall be adjusted by the office of the superintendent of public instruction to reflect each district's proportional share of student enrollment in the cooperative;

(e) The district's maximum levy amount shall be reduced by the maximum amount of state matching funds for which the district is eligible under RCW 28A.500.010.

(3) For excess levies for collection in calendar year 2005 and thereafter, a district's levy base shall be the sum of allocations in (a) through (c) of this subsection received by the district for the prior school year and the amounts determined under subsection (4) of this section, including allocations for compensation increases, plus the sum of such allocations multiplied by the percent increase per full-time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year and divided by fifty-five percent. A district's levy base shall not include local school district property tax levies or other local revenues, or state and federal allocations not identified in (a) through (c) of this subsection.

(a) The district's basic education allocation as determined pursuant to RCW 28A.150.250, 28A.150.260, and 28A.150.350;

(b) State and federal categorical allocations for the following programs:

(i) Pupil transportation;

(ii) Special education;

(iii) Education of highly capable students;

(iv) Compensatory education, including but not limited to learning assistance, migrant education, Indian education, refugee programs, and bilingual education;

(v) Food services; and

(vi) Statewide block grant programs; and

(c) Any other federal allocations for elementary and secondary school programs, including direct grants, other than federal impact aid funds and allocations in lieu of taxes.

(4) For levy collections in calendar years 2005 through 2017, in addition to the allocations included under subsection (3)(a) through (c) of this section, a district's levy base shall also include the following:

(a)(i) For levy collections in calendar year 2010, the difference between the allocation the district would have received in the current school year had RCW 84.52.068 not been amended by chapter 19, Laws of 2003 1st sp. sess. and the allocation the district received in the current school year pursuant to RCW 28A.505.220;

(ii) For levy collections in calendar years 2011 through 2017, ~~((the difference between))~~ the allocation rate the district would have received in the prior school year using the Initiative 728 rate ~~((and the allocation rate the district received in the prior school year pursuant to RCW 28A.505.220))~~ multiplied by the full-time equivalent student enrollment used to calculate the Initiative 728 allocation for the prior school year; and

(b) The difference between the allocations the district would have received the prior school year using the Initiative 732 base and the allocations the district actually received the prior school year pursuant to RCW 28A.400.205.

(5) For levy collections in calendar years 2011 through 2017, in addition to the allocations included under subsections (3)(a) through (c) and (4)(a) and (b) of this section, a district's levy base shall also include the difference between an allocation of fifty-three and two-tenths certificated instructional staff units per thousand full-time equivalent students in grades kindergarten through four enrolled in the prior school year and the allocation of certificated instructional staff units per thousand full-time equivalent students in grades kindergarten through four that the district actually received in the prior school year, except that the levy base for a school district whose allocation in the 2009-10 school year was less than fifty-three and two-tenths certificated instructional staff units per thousand full-time equivalent students in grades kindergarten through four shall include the difference between the allocation the district actually received in the 2009-10 school year and the allocation the district actually received in the prior school year.

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(6)(a) A district's maximum levy percentage shall be twenty-four percent in 2010 and twenty-eight percent in 2011 through 2017 and twenty-four percent every year thereafter;

(b) For qualifying districts, in addition to the percentage in (a) of this subsection the grandfathered percentage determined as follows:

(i) For 1997, the difference between the district's 1993 maximum levy percentage and twenty percent; and

(ii) For 2011 through 2017, the percentage calculated as follows:

(A) Multiply the grandfathered percentage for the prior year times the district's levy base determined under subsection (3) of this section;

(B) Reduce the result of (b)(ii)(A) of this subsection by any levy reduction funds as defined in subsection (7) of this section that are to be allocated to the district for the current school year;

(C) Divide the result of (b)(ii)(B) of this subsection by the district's levy base; and

(D) Take the greater of zero or the percentage calculated in (b)(ii)(C) of this subsection.

(7) "Levy reduction funds" shall mean increases in state funds from the prior school year for programs included under subsections (3) and (4) of this section: (a) That are not attributable to enrollment changes, compensation increases, or inflationary adjustments; and (b) that are or were specifically identified as levy reduction funds in the appropriations act. If levy reduction funds are dependent on formula factors which would not be finalized until after the start of the current school year, the superintendent of public instruction shall estimate the total amount of levy reduction funds by using prior school year data in place of current school year data. Levy reduction funds shall not include moneys received by school districts from cities or counties.

(8) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Prior school year" means the most recent school year completed prior to the year in which the levies are to be collected.

(b) "Current school year" means the year immediately following the prior school year.

(c) "Initiative 728 rate" means the allocation rate at which the student achievement program would have been funded under chapter 3, Laws of 2001, if all annual adjustments to the initial 2001 allocation rate had been made in previous years and in each subsequent year as provided for under chapter 3, Laws of 2001.

(d) "Initiative 732 base" means the prior year's state allocation for annual salary cost-of-living increases for district employees in the state-funded salary base as it would have been calculated under chapter 4, Laws of 2001, if each annual cost-of-living increase allocation had been provided in previous years and in each subsequent year.

(9) Funds collected from transportation vehicle fund tax levies shall not be subject to the levy limitations in this section.

(10) The superintendent of public instruction shall develop rules and inform school districts of the pertinent data necessary to carry out the provisions of this section.

(11) For calendar year 2009, the office of the superintendent of public instruction shall recalculate school district levy authority to reflect levy rates certified by school districts for calendar year 2009.

**NEW SECTION. Sec. 9.** The following acts or parts of acts are each repealed:

(1) RCW 28A.505.210 (Student achievement funds--Use and accounting of funds--Public hearing--Report) and 2009 c 479 s 17, 2005 c 497 s 105, & 2001 c 3 s 3; and

(2) RCW 28A.505.220 (Student achievement program--General fund allocation) and 2011 1st sp.s. c 17 s 1.

**NEW SECTION. Sec. 10.** Section 8 of this act expires January 1, 2018."

Senator Murray spoke in favor of adoption of the committee striking amendment.

#### MOTION

Senator Murray moved that the following amendment by Senators Murray and Zarelli to the committee striking amendment be adopted:

On page 2, line 6, after "transportation formula." insert, "The task force shall also consider the specific recommendations for the transitional bilingual instructional program from the quality education council to the legislature dated January 6, 2012. It shall provide recommendations for: implementation of a scaled funding formula based on levels of English language proficiency, a supplemental formula based on students exiting the program due to demonstrated English language proficiency, and implementing English language proficiency."

On page 5, after line 18 of the amendment, strike "(4))" After July 1, 2010, the state treasurer shall transfer one hundred two million dollars from the general fund to the education (~~construction fund~~) legacy trust account by June 30th of each year."

and insert "(4) After July 1, 2010, the state treasurer shall transfer one hundred two million dollars from the general fund to the education construction fund by June 30th of each year."

On page 6, line 34 of the amendment, after "common schools," strike "for transfer to the common school construction account for state assistance to public school facilities construction projects."

Senator Murray spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Murray and Zarelli on page 2, line 6 to the committee striking amendment to House Bill No. 2824.

The motion by Senator Murray carried and the amendment to the committee striking amendment was adopted by voice vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means as amended to House Bill No. 2824.

The motion by Senator Murray carried and the committee striking amendment as amended was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 3 of the title, after "program;" strike the remainder of the title and insert "amending RCW 28A.600.405, 43.135.045, 67.70.340, and 83.100.230; reenacting and amending RCW 28A.150.380 and 84.52.0531; repealing RCW 28A.505.210 and 28A.505.220; creating new sections; and providing an expiration date."

#### MOTION

On motion of Senator Murray, the rules were suspended, House Bill No. 2824 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Murray spoke in favor of passage of the bill.  
Senator Rolfes spoke against passage of the bill.

#### MOTION

On motion of Senator Harper, Senator Hargrove was excused.

#### MOTION

On motion of Senator Ericksen, Senators Hewitt and Zarelli were excused.

The President declared the question before the Senate to be the final passage of House Bill No. 2824 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2824 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 28; Nays, 20; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Becker, Brown, Carrell, Delvin, Ericksen, Hargrove, Harper, Hatfield, Hobbs, Holmquist Newbry, Honeyford, Kastama, Kilmer, King, Kline, Morton, Murray, Padden, Parlette, Pflug, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senators Benton, Chase, Conway, Eide, Fain, Fraser, Frockt, Haugen, Hill, Keiser, Kohl-Welles, Litzow, McAuliffe, Nelson, Prentice, Pridemore, Ranker, Regala, Roach and Rolfes

Excused: Senator Hewitt

HOUSE BILL NO. 2824 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### MOTION

At 9:15 p.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

The Senate was called to order at 10:22 p.m. by President Owen.

#### MOTION

On motion of Senator Eide, the Senate advanced to the seventh order of business.

#### MOTION

On motion of Senator Eide, Senator Brown was excused.

#### MOTION

On motion of Senator Ericksen, Senators Benton and Stevens were excused.

#### THIRD READING

ENGROSSED SUBSTITUTE SENATE BILL NO. 6392, by Senate Committee on Labor, Commerce & Consumer Protection (originally sponsored by Senators Ranker, Kohl-Welles, Conway and Shin).

Establishing a farm internship program.

The bill was read on Third Reading.

Senators Ranker and Schoesler spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 6392.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 6392 and the passed the Senate by the following vote: Yeas, 46; Nays, 0; Absent, 0; Excused, 3.

Voting yea: Senators Baumgartner, Becker, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Swecker, Tom and Zarelli

Excused: Senators Benton, Hewitt and Stevens

ENGROSSED SUBSTITUTE SENATE BILL NO. 6392, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### MOTION

On motion of Senator Eide, the Senate reverted to the fourth order of business.

#### MESSAGE FROM THE HOUSE

April 10, 2012

MR. PRESIDENT:

The Speaker has signed:

SUBSTITUTE HOUSE BILL NO. 2491,  
SUBSTITUTE HOUSE BILL NO. 2590,  
SUBSTITUTE HOUSE BILL NO. 2828,  
HOUSE CONCURRENT RESOLUTION NO. 4411,

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

#### SIGNED BY THE PRESIDENT

The President signed:

SUBSTITUTE HOUSE BILL NO. 2491,  
SUBSTITUTE HOUSE BILL NO. 2590,  
SUBSTITUTE HOUSE BILL NO. 2828,  
HOUSE CONCURRENT RESOLUTION NO. 4411.

#### MESSAGE FROM THE HOUSE

April 10, 2012

MR. PRESIDENT:

The House passed SECOND ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 6204 with the following amendment(s): 6204-S2.E2 AMH ROSC KOST 267

On page 2, line 15, after "crime" insert ", except if the offender's underlying offense is a felony offense listed in RCW 9.94A.737(5), in which case the department will hold the offender for thirty days from the time of arrest or until a prosecuting attorney charges the offender with a crime, whichever occurs first"

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On page 8, line 7, after "crime" insert ", except if the offender's underlying offense is a felony offense listed in RCW 9.94A.737(5), in which case the department will hold the offender for thirty days from the time of arrest or until a prosecuting attorney charges the offender with a crime, whichever occurs first"

On page 8, line 35, after "(b)" insert the following:

"After an offender has committed and been sanctioned for five low level violations, all subsequent violations committed by that offender shall automatically be considered high level violations.

(c)"

On page 9, line 32, after "(5)" insert the following:

"If the offender's underlying offense is one of the following felonies and the violation behavior constitutes a new misdemeanor, gross misdemeanor or felony, the offender shall be held in total confinement pending a sanction hearing, and until the sanction expires or until if a prosecuting attorney files new charges against the offender, whichever occurs first:

- (i) Assault in the first degree, as defined in RCW 9A.36.011;
- (ii) Assault of a child in the first degree, as defined in RCW 9A.36.120;
- (iii) Assault of a child in the second degree, as defined in RCW 9A.36.130;
- (iv) Burglary in the first degree, as defined in RCW 9A.52.020;
- (v) Child molestation in the first degree, as defined in RCW 9A.44.083;
- (vi) Commercial sexual abuse of a minor, as defined in RCW 9.68A.100;
- (v) Dealing in depictions of a minor engaged in sexually explicit conduct, as defined in RCW 9.68A.050;
- (vi) Homicide by abuse, as defined in RCW 9A.32.055;
- (vii) Indecent liberties with forcible compulsion, as defined in RCW 9A.44.100(1)(a);
- (viii) Indecent liberties with a person capable of consent, as defined in RCW 9A.44.100(1)(b);
- (ix) Kidnapping in the first degree, as defined in RCW 9A.40.020;
- (x) Murder in the first degree, as defined in RCW 9A.32.030;
- (xi) Murder in the second degree, as defined in RCW 9A.32.050;
- (xii) Promoting commercial sexual abuse of a minor, as defined in RCW 9.68A.101;
- (xiii) Rape in the first degree, as defined in RCW 9A.44.040;
- (xiv) Rape in the second degree, as defined in RCW 9A.44.050;
- (xv) Rape of a child in the first degree, as defined in RCW 9A.44.073;
- (xvi) Rape of a child in the second degree, as defined in RCW 9A.44.076;
- (xvii) Robbery in the first degree, as defined in RCW 9A.56.200;
- (xviii) Sexual exploitation of a minor, as defined in RCW 9.68A.040; or
- (xix) Vehicular homicide while under the influence of intoxicating liquor or any drug, as defined in RCW 46.61.520(1)(a).

(6)"

Renumber the remaining sections consecutively and correct any internal references accordingly.  
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Hargrove moved that the Senate concur in the House amendment(s) to Second Engrossed Second Substitute Senate Bill No. 6204.

Senator Hargrove spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Hargrove that the Senate concur in the House amendment(s) to Second Engrossed Second Substitute Senate Bill No. 6204.

The motion by Senator Hargrove carried and the Senate concurred in the House amendment(s) to Second Engrossed Second Substitute Senate Bill No. 6204 by voice vote.

The President declared the question before the Senate to be the final passage of Second Engrossed Second Substitute Senate Bill No. 6204, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Second Engrossed Second Substitute Senate Bill No. 6204, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 45; Nays, 2; Absent, 0; Excused, 2.

Voting yea: Senators Baumgartner, Becker, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hill, Hobbs, Holmquist, Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Rolfes, Schoesler, Sheldon, Shin, Swecker, Tom and Zarelli

Voting nay: Senators Benton and Roach

Excused: Senators Hewitt and Stevens

SECOND ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 6204, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator Eide, the Senate advanced to the sixth order of business.

SECOND READING

HOUSE BILL NO. 2822, by Representative Hunter

Concerning local sales and use tax account deposits and distributions.

The measure was read the second time.

MOTION

On motion of Senator Murray, the rules were suspended, House Bill No. 2822 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Murray spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2822.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2822 and the bill passed the Senate by the following vote: Yeas, 42; Nays, 5; Absent, 0; Excused, 2.

Voting yea: Senators Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hobbs, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Swecker, Tom and Zarelli

Voting nay: Senators Baumgartner, Ericksen, Hill, Holmquist Newbry and Padden

Excused: Senators Hewitt and Stevens

HOUSE BILL NO. 2822, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

## SECOND READING

SENATE BILL NO. 6623, by Senators Delvin, Ericksen and Swecker

Relating to state government. (REVISED FOR ENGROSSED: Concerning tobacco by clarifying cigarettes produced from roll-your-own machines are subject to the cigarette tax and providing for a special license endorsement for cigar lounges and retail tobacconist shops.)

The measure was read the second time.

## MOTION

Senator Delvin moved that the following striking amendment by Senators Delvin and Schoesler be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 82.24.010 and 1997 c 420 s 3 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Board" means the liquor control board.

(2) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state. "Cigarette" includes a roll-your-own cigarette.

(3) "Cigarette paper" means any paper or any other material except tobacco, prepared for use as a cigarette wrapper.

(4) "Cigarette tube" means cigarette paper made into a hollow cylinder for use in making cigarettes.

(5) "Commercial cigarette-making machine" means a machine that is operated in a retail establishment and that is capable of being loaded with loose tobacco, cigarette paper or tubes, and any other components related to the production of roll-your-own cigarettes, including filters.

(6) "Indian tribal organization" means a federally recognized Indian tribe, or tribal entity, and includes an Indian wholesaler or retailer that is owned by an Indian who is an enrolled tribal member conducting business under tribal license or similar tribal approval within Indian country. For purposes of this chapter "Indian country" is defined in the manner set forth in 18 U.S.C. Sec. 1151.

~~((4))~~ (7) "Precollection obligation" means the obligation of a seller otherwise exempt from the tax imposed by this chapter to collect the tax from that seller's buyer.

~~((5))~~ (8) "Retailer" means every person, other than a wholesaler, who purchases, sells, offers for sale or distributes any one or more of the articles taxed herein, irrespective of quantity or

amount, or the number of sales, and all persons operating under a retailer's registration certificate.

~~((6))~~ (9) "Retail selling price" means the ordinary, customary or usual price paid by the consumer for each package of cigarettes, less the tax levied by this chapter and less any similar tax levied by this state.

~~((7))~~ (10) "Roll-your-own cigarettes" means cigarettes produced by a commercial cigarette-making machine.

(11) "Stamp" means the stamp or stamps by use of which the tax levy under this chapter is paid or identification is made of those cigarettes with respect to which no tax is imposed.

~~((8))~~ (12) "Wholesaler" means every person who purchases, sells, or distributes any one or more of the articles taxed herein to retailers for the purpose of resale only.

~~((9))~~ (13) The meaning attributed, in chapter 82.04 RCW, to the words "person," "sale," "business" and "successor" applies equally in this chapter.

**Sec. 2.** RCW 82.24.030 and 2003 c 114 s 2 are each amended to read as follows:

(1) In order to enforce collection of the tax hereby levied, the department of revenue ~~((shall))~~ must design and have printed stamps of such size and denominations as may be determined by the department. The stamps must be affixed on the smallest container or package that will be handled, sold, used, consumed, or distributed, to permit the department to readily ascertain by inspection, whether or not such tax has been paid or whether an exemption from the tax applies.

(2) Except as otherwise provided in this chapter, only a wholesaler ~~((shall))~~ may cause to be affixed on every package of cigarettes, stamps of an amount equaling the tax due thereon or stamps identifying the cigarettes as exempt before he or she sells, offers for sale, uses, consumes, handles, removes, or otherwise disturbs and distributes the same ~~((:—PROVIDED, That))~~, However, where it is established to the satisfaction of the department that it is impractical to affix such stamps to the smallest container or package, the department may authorize the affixing of stamps of appropriate denomination to a large container or package.

(3) Except as otherwise provided in this chapter, only wholesalers may purchase or obtain cigarette stamps. Wholesalers ~~((shall))~~ may not sell or provide stamps to any other wholesaler or person.

(4) Each roll of stamps, or group of sheets, ~~((shall))~~ must have a separate serial number, which ~~((shall be))~~ is legible at the point of sale. The department of revenue ~~((shall))~~ must keep records of which wholesaler purchases each roll or group of sheets. If the department of revenue permits wholesalers to purchase partial rolls or sheets, in no case may stamps bearing the same serial number be sold to more than one wholesaler. The remainder of the roll or sheet, if any, ~~((shall))~~ must either be retained for later purchases by the same wholesaler or destroyed.

(5) Nothing in this section ~~((shall))~~ may be construed as limiting any otherwise lawful activity under a cigarette tax compact pursuant to chapter 43.06 RCW.

(6) In order to enforce collection of the tax in the case of roll-your-own cigarettes, a retailer must affix a stamp or stamps to each box or similar container provided by the retailer to the consumer. The box or similar container must be used by a consumer to transport roll-your-own cigarettes from the retailer's place of business. A retailer must provide cigarette tubes to a consumer in one or more twenty unit denominations. Stamps must be for an amount equaling the tax due under this chapter. Each cigarette tube or paper provided to the consumer is deemed a cigarette for purposes of imposing and collecting taxes under this chapter. Stamps for roll-your-own cigarettes must be issued and affixed in a manner determined by the department but as consistent as practicable with the stamping requirements for wholesalers.

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**Sec. 3.** RCW 82.24.035 and 1999 c 193 s 5 are each amended to read as follows:

(1) No stamp may be affixed to, or made upon, any container or package of cigarettes if:

(a) The container or package differs in any respect with the requirements of the federal cigarette labeling and advertising act (15 U.S.C. Sec. 1331 et seq.) for the placement of labels, warnings, or any other information upon a package of cigarettes that is to be sold within the United States;

(b) The container or package has been imported into the United States after January 1, 2000, in violation of 26 U.S.C. Sec. 5754;

(c) The container or package, including a container of individually stamped containers or packages, is labeled "For Export Only," "U.S. Tax Exempt," "For Use Outside U.S.," or similar wording indicating that the manufacturer did not intend that the product be sold in the United States; or

(d) The container or package has been altered by adding or deleting the wording, labels, or warnings described in (a) or (c) of this subsection.

(2) In addition to the penalty and forfeiture provisions otherwise provided for in this chapter, a violation of this section is a deceptive act or practice under the consumer protection act, chapter 19.86 RCW.

(3) Subsection (1)(a) of this section does not apply to boxes or similar containers used by a consumer to transport roll-your-own cigarettes.

**Sec. 4.** RCW 82.24.050 and 2003 c 114 s 4 are each amended to read as follows:

(1) No retailer in this state may possess unstamped cigarettes within this state unless the person is also a wholesaler in possession of the cigarettes in accordance with RCW 82.24.040.

(2) A retailer may obtain cigarettes only from a wholesaler subject to the provisions of this chapter.

(3) Only a retailer licensed under this chapter may provide consumers with access to a commercial cigarette-making machine to make roll-your-own cigarettes. A retailer is prohibited from allowing the use of a commercial cigarette-making machine by a person unless, contemporaneously to the person's use of the machine, the retailer provides the consumer with a box or similar container to transport roll-your-own cigarettes and such box is affixed with the appropriate stamp or stamps as required under RCW 82.24.030(6). A consumer must transport roll-your-own cigarettes from a retailer's place of business only in such box or similar container.

(4) A commercial cigarette-making machine must have a secure meter that counts the number of cigarettes made, manufactured, or fabricated by the machine and that cannot be accessed, except for the sole purpose of taking meter readings, altered or reset by the machine operator.

**Sec. 5.** RCW 82.24.060 and 1961 c 15 s 82.24.060 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, stamps ~~((shall))~~ must be affixed in such manner that they cannot be removed from the package or container without being mutilated or destroyed, which stamps so affixed ~~((shall be))~~ are evidence of the tax imposed.

(2) In the case of cigarettes contained in individual packages, as distinguished from cartons or larger units, the stamps ~~((shall))~~ must be affixed securely on each individual package.

(3) With respect to roll-your-own cigarettes, stamps must be affixed securely on each individual box or similar container provided by the retailer to the consumer.

**Sec. 6.** RCW 82.24.110 and 2008 c 226 s 4 are each amended to read as follows:

(1) Each of the following acts is a gross misdemeanor and punishable as such:

(a) To sell, except as a licensed wholesaler engaged in interstate commerce as to the article being taxed herein, without the stamp first being affixed;

(b) To sell in Washington as a wholesaler to a retailer who does not possess and is required to possess a current cigarette retailer's license;

(c) To use or have in possession knowingly or intentionally any forged or counterfeit stamps;

(d) For any person other than the department of revenue or its duly authorized agent to sell any stamps not affixed to any of the articles taxed herein whether such stamps are genuine or counterfeit;

(e) For any person other than the department of revenue, its duly authorized agent, or a licensed wholesaler who has lawfully purchased or obtained them to possess any stamps not affixed to any of the articles taxed herein whether such stamps are genuine or counterfeit;

(f) To violate any of the provisions of this chapter;

(g) To violate any lawful rule made and published by the department of revenue or the board;

(h) To use any stamps more than once or any individual stamped box or similar container used to transport roll-your-own cigarettes more than once;

(i) To refuse to allow the department of revenue or its duly authorized agent, on demand, to make full inspection of any place of business where any of the articles herein taxed are sold or otherwise hinder or prevent such inspection;

(j) Except as otherwise provided in this chapter, for any retailer to have in possession in any place of business any of the articles herein taxed, unless the same have the proper stamps attached;

(k) For any person to make, use, or present or exhibit to the department of revenue or its duly authorized agent, any invoice for any of the articles herein taxed which bears an untrue date or falsely states the nature or quantity of the goods therein invoiced;

(l) For any wholesaler or retailer or his or her agents or employees to fail to produce on demand of the department of revenue all invoices of all the articles herein taxed or stamps bought by him or her or received in his or her place of business within five years prior to such demand unless he or she can show by satisfactory proof that the nonproduction of the invoices was due to causes beyond his or her control;

(m) For any person to receive in this state any shipment of any of the articles taxed herein, when the same are not stamped, for the purpose of avoiding payment of tax. It is presumed that persons other than dealers who purchase or receive shipments of unstamped cigarettes do so to avoid payment of the tax imposed herein;

(n) For any person to possess or transport in this state a quantity of ten thousand cigarettes or less unless the proper stamps required by this chapter have been affixed or unless: (i) Notice of the possession or transportation has been given as required by RCW 82.24.250; (ii) the person transporting the cigarettes has in actual possession invoices or delivery tickets which show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported; and (iii) the cigarettes are consigned to or purchased by any person in this state who is authorized by this chapter to possess unstamped cigarettes in this state;

(o) For any person to possess or receive in this state a quantity of ten thousand cigarettes or less unless the proper stamps required by this chapter have been affixed or unless the person is authorized by this chapter to possess unstamped cigarettes in this state and is in compliance with the requirements of this chapter; ~~((and))~~

(p) To possess, sell, distribute, purchase, receive, ship, or transport within this state any container or package of cigarettes that does not comply with this chapter; and

(q) For a retailer to provide consumers with access to a

commercial cigarette-making machine without providing a box or similar container that has a properly affixed stamp or stamps.

(2) It is unlawful for any person knowingly or intentionally to possess or to:

(a) Transport in this state a quantity in excess of ten thousand cigarettes unless the proper stamps required by this chapter are affixed thereto or unless: (i) Proper notice as required by RCW 82.24.250 has been given; (ii) the person transporting the cigarettes actually possesses invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported; and (iii) the cigarettes are consigned to or purchased by a person in this state who is authorized by this chapter to possess unstamped cigarettes in this state; or

(b) Receive in this state a quantity in excess of ten thousand cigarettes unless the proper stamps required by this chapter are affixed thereto or unless the person is authorized by this chapter to possess unstamped cigarettes in this state and is in compliance with this chapter.

(3) Violation of ~~((this))~~ subsection (2) ~~((shall be))~~ of this section is punished as a class C felony under Title 9A RCW.

~~((3))~~ (4) All agents, employees, and others who aid, abet, or otherwise participate in any way in the violation of the provisions of this chapter or in any of the offenses described in this chapter ~~((shall be))~~ are guilty and punishable as principals, to the same extent as any wholesaler or retailer or any other person violating this chapter.

~~((4))~~ (5) For purposes of this section, "person authorized by this chapter to possess unstamped cigarettes in this state" has the same meaning as in RCW 82.24.250.

**Sec. 7.** RCW 82.24.120 and 2007 c 111 s 102 are each amended to read as follows:

(1) If any person, subject to the provisions of this chapter or any rules adopted by the department of revenue under authority ~~((hereof))~~ of this section, is found to have failed to affix the stamps required, or to have them affixed as ~~((herein))~~ provided in this section, or to pay any tax due ~~((hereunder))~~ under this section, or to have violated any of the provisions of this chapter or rules adopted by the department of revenue in the administration ~~((hereof))~~ of this chapter, there ~~((shall))~~ must be assessed and collected from such person, in addition to any tax that may be found due, a remedial penalty equal to the greater of ten dollars per package of unstamped cigarettes or ten dollars per twenty roll-your-own cigarettes, or two hundred fifty dollars, plus interest on the amount of the tax at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment, and upon notice mailed to the last known address of the person or provided electronically as provided in RCW 82.32.135. The amount ~~((shall become))~~ is due and payable in thirty days from the date of the notice. If the amount remains unpaid, the department or its duly authorized agent may make immediate demand upon such person for the payment of all such taxes, penalties, and interest.

(2) The department, for good reason shown, may waive or cancel all or any part of penalties imposed, but the taxpayer must pay all taxes due and interest thereon, at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment.

(3) The keeping of any unstamped articles coming within the provisions of this chapter ~~((shall be))~~ is prima facie evidence of intent to violate the provisions of this chapter.

(4) This section does not apply to taxes or tax increases due under RCW 82.24.280.

**Sec. 8.** RCW 82.24.130 and 2003 c 114 s 7, 2003 c 113 s 4, and 2003 c 25 s 9 are each reenacted and amended to read as follows:

(1) The following are subject to seizure and forfeiture:

(a) Subject to RCW 82.24.250, any articles taxed in this chapter that are found at any point within this state, which articles are held, owned, or possessed by any person, and that do not have the stamps affixed to the packages or containers; any container or package of cigarettes possessed or held for sale that does not comply with this chapter; and any container or package of cigarettes that is manufactured, sold, or possessed in violation of RCW 82.24.570.

(b) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in (a) of this subsection, except:

(i) A conveyance used by any person as a common or contract carrier having in actual possession invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the cigarettes transported, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(ii) A conveyance subject to forfeiture under this section by reason of any act or omission of which the owner thereof establishes to have been committed or omitted without his or her knowledge or consent;

(iii) A conveyance encumbered by a bona fide security interest if the secured party neither had knowledge of nor consented to the act or omission.

(c) Any vending machine or commercial cigarette-making machine used for the purpose of violating the provisions of this chapter.

(d) Any cigarettes that are stamped, sold, imported, or offered or possessed for sale in this state in violation of RCW 70.158.030(3). For the purposes of this subsection (1)(d), "cigarettes" has the meaning as provided in RCW 70.158.020(3).

~~((e))~~ All cigarettes sold, delivered, or attempted to be delivered in violation of RCW 70.155.105.)

(2) Property subject to forfeiture under this chapter may be seized by any agent of the department authorized to collect taxes, any enforcement officer of the board, or law enforcement officer of this state upon process issued by any superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant; or

(b) The department, the board, or the law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable.

(3) Notwithstanding the foregoing provisions of this section, articles taxed in this chapter which are in the possession of a wholesaler, licensed under Washington state law, for a period of time necessary to affix the stamps after receipt of the articles, ~~((shall))~~ are not ~~((be))~~ considered contraband unless they are manufactured, sold, or possessed in violation of RCW 82.24.570.

**Sec. 9.** RCW 82.24.180 and 1996 c 149 s 8 are each amended to read as follows:

(1) The department of revenue may return any property seized under the provisions of this chapter when it is shown that there was no intention to violate the provisions thereof.

(2) When any property is returned under this section, the department may return such goods to the parties from whom they were seized if and when such parties affix the proper amount of stamps thereto, and pay to the department as penalty an amount equal to the greater of ten dollars per package of unstamped cigarettes or ten dollars per twenty roll-your-own cigarettes, or two hundred fifty dollars, and interest on the amount of the tax at the rate

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as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment, and in such cases, no advertisement shall be made or notices posted in connection with said seizure.

**Sec. 10.** RCW 82.24.295 and 2001 c 235 s 6 are each amended to read as follows:

(1) The taxes imposed by this chapter do not apply to the sale, use, consumption, handling, possession, or distribution of cigarettes by an Indian retailer during the effective period of a cigarette tax contract subject to RCW 43.06.455.

(2) Effective July 1, 2002, wholesalers and retailers subject to the provisions of this chapter (~~shall be~~) are allowed compensation for their services in affixing the stamps required under this chapter a sum computed at the rate of six dollars per one thousand stamps purchased or affixed by them.

(3) In addition to the compensation allowed under subsection (2) of this section, retailers purchasing stamps for roll-your-own cigarettes are allowed additional compensation to offset the cost of the tax under chapter 82.26 RCW. The amount equals five cents per cigarette.

**Sec. 11.** RCW 82.24.500 and 2003 c 114 s 10 are each amended to read as follows:

No person may engage in or conduct the business of purchasing, selling, consigning, or distributing cigarettes in this state without a license under this chapter, or providing consumers with access to a commercial cigarette-making machine without a license under this chapter. A violation of this section is a class C felony.

**Sec. 12.** RCW 82.24.530 and 1993 c 507 s 15 are each amended to read as follows:

A fee of ninety-three dollars (~~shall~~) must accompany each retailer's license application or license renewal application. A separate license is required for each separate location at which the retailer operates. A fee of thirty additional dollars for each vending machine (~~shall~~) must accompany each application or renewal for a license issued to a retail dealer operating a cigarette vending machine. An additional fee of ninety-three dollars shall accompany each application or renewal for a license issued to a retail dealer operating a cigarette-making machine.

**NEW SECTION. Sec. 13.** A new section is added to chapter 82.26 RCW to read as follows:

(1) A person holding a tobacco products retailer's license issued under this chapter may apply through the master license system under chapter 19.02 RCW for a special endorsement as a cigar lounge or retail tobacconist shop subject to the requirements of this section.

(2) A fee of seventeen thousand five hundred dollars must accompany each special license endorsement application under subsection (3) of this section and a fee of six thousand dollars must accompany each special license endorsement application under subsection (4) of this section.

(3) The board must issue an endorsement as a cigar lounge to a business that meets the requirements of subsections (1) and (2) of this section and that has submitted an affidavit to the board certifying that it:

(a) Is an establishment or part of an establishment specifically designated for the smoking of tobacco products, purchased on the premises or elsewhere, which is physically separated from any areas of the same or adjacent location where smoking is prohibited under state law. For the purposes of this subsection, "physically separated" means an area that is enclosed on all sides by solid, impermeable walls or windows extending from the floor to ceiling with self-closing doors.

(b) Will not allow cigarettes to be smoked in the area designated in (a) of this subsection;

(c) Holds a valid spirits, beer, and wine license in good standing from the board;

(d) Has a valid uniform business identifier number and, if it is an established business with reportable gross receipts, has paid all applicable state business and occupation taxes in the year prior to application for endorsement;

(e) In the year immediately preceding initial application or renewal, derived at least twenty-five thousand dollars of the business' annual gross income from the combination of the sale of tobacco products, tobacco products related paraphernalia, and the rental of on-site humidor space. In the case where this is the first endorsement application, the applicant may use any year prior to the initial application to meet the requirements of this subsection or must show proof that it has purchased, at wholesale, at least twelve thousand five hundred dollars in tobacco products and tobacco products related paraphernalia;

(f) Has obtained a signed letter, on appropriate letterhead, from a heating, ventilation, and air-conditioning, and refrigeration contractor holding a valid registration with the department of labor and industries pursuant to chapter 18.27 RCW, which certifies that the ventilation and exhaust system for the area designated in (a) of this subsection:

(i) Is separate and distinct from the location's general heating, ventilation, and air-conditioning system;

(ii) Has an air flow, as calculated in cubic feet per minute, that will provide for at least thirteen or more air changes within the space served by the ventilation and exhaust system;

(iii) Uses the correct quantity of filters recommended by the manufacturer of the ventilation and exhaust system and that those filters have a minimum efficiency rating value of fourteen or higher. For the purposes of this subsection, "minimum efficiency rating value" means the air-cleaning performance rating value as expressed in American society of heating, refrigerating, and air-conditioning engineers standard 52.2-2007; and

(iv) Uses a loose-fill, rechargeable-type sorbent material positioned across the airflow in such a configuration that gaseous contaminants will have a residence time of one-tenth of one second or more within the sorbent material. For the purposes of this section, "residence time" must be calculated consistent with the recommendations outlined in Chapter 45 of the 2007 American society of heating, refrigerating, and air-conditioning engineers handbook - HVAC applications entitled "Control of Gaseous Indoor Air Contaminants";

(g) Has on file, from each employee that may work in the area designated in (a) of this subsection, a signed acknowledgment that the employee has been advised of and accepts that environmental tobacco smoke may be present in their potential work area. The acknowledgment must contain the signature of the employee, the employer, and a disinterested third-party witness;

(h) Will post signage indicating that environmental tobacco smoke may be present in the establishment or part of the establishment. This signage must be in the form and manner provided by the board and must be placed in a conspicuous location at each entry to the area designated in (a) of this subsection.

(4) The board must issue an endorsement as a retail tobacconist shop to a business that meets the requirements of subsections (1) and (2) of this section and that has submitted an affidavit to the board certifying that it:

(a) Is an establishment whose primary purpose is the sale of tobacco products and tobacco product related paraphernalia and that is physically separated from any adjacent location where smoking is prohibited under state law. For the purposes of this subsection, "physically separated" means an area that is enclosed on all sides by solid, impermeable walls or windows extending from the floor to ceiling with self-closing doors;

(b) Will not allow cigarettes to be smoked in the area designated in (a) of this subsection;

(c) Will prohibit entry into the area designated in subsection (3)(a) of this section to any person under the age of eighteen;

(d) Has a valid uniform business identifier number and, if an established business with reportable gross receipts, has paid all applicable state business and occupation taxes in the year prior to application for endorsement;

(e) In the year immediately preceding initial application or renewal, derived at least seventy-five percent of the business' annual gross income from the combination of the sale of tobacco products and tobacco product related paraphernalia. In the case where this is the first endorsement application, the applicant may use any year prior to the initial application to meet the requirements of this subsection or must show proof that it has purchased, at wholesale, at least twenty-five thousand dollars in tobacco products and tobacco products related paraphernalia;

(f) Has obtained a signed letter, on appropriate letterhead, from a heating, ventilation, and air-conditioning, and refrigeration contractor holding a valid registration with the department of labor and industries pursuant to chapter 18.27 RCW, which certifies that the ventilation and exhaust system for the area designated in (a) of this subsection:

(i) Is separate and distinct from the location's general heating, ventilation, and air-conditioning system;

(ii) Has an airflow, as calculated in cubic feet per minute, that provides for at least thirteen or more air changes within the space served by the ventilation and exhaust system; and

(iii) Uses the correct quantity of filters recommended by the manufacturer of the ventilation and exhaust system and that those filters have a minimum efficiency rating value of fourteen or higher. For the purposes of this subsection, "minimum efficiency rating value" means the air-cleaning performance rating value as expressed in American society of heating, refrigerating, and air-conditioning engineers standard 52.2-2007; and

(iv) Uses a loose-fill, rechargeable-type sorbent material positioned across the airflow in such a configuration that gaseous contaminants will have a residence time of one-tenth of one second or more within the sorbent material. For the purposes of this section, "residence time" must be calculated consistent with the recommendations outlined in Chapter 45 of the 2007 American society of heating, refrigerating, and air-conditioning engineers handbook - HVAC applications entitled "Control of Gaseous Indoor Air Contaminants";

(g) Has on file, from each employee that may work in the area designated in (a) of this subsection, a signed acknowledgment that the employee has been advised of and accepts that environmental tobacco smoke may be present in their potential work area. The acknowledgment must contain the signature of the employee, the employer, and a disinterested third-party witness;

(h) Will post signage indicating that environmental tobacco smoke may be present in the establishment or part of the establishment. This signage must be in the form and manner provided by the board and must be placed in a conspicuous location at each entry to the area designated in (a) of this subsection.

(5) No employer may discharge, threaten to discharge, demote, deny a promotion to, sanction, discipline, retaliate against, harass, or otherwise discriminate against an employee, employed by the employer on or before the effective date of this section, solely for refusing to consent to or sign the acknowledgment required in subsections (3)(g) or (4)(g) of this section.

(6) The affidavits required under this section must be submitted in a form and manner as prescribed by the board to effectively administer the provisions of this chapter.

(7) The board may request additional documentation or information from an applicant in order to verify that the business meets the requirements of this section. The applicant must comply

with requests from the department under this subsection or the board may withhold issuance of an endorsement.

(8) Endorsements granted under this section are effective for the same period as provided in the tobacco products retailer's license granted to the applicant under this chapter. However, the affidavit required under this section must be completed and verified each year by the board and the appropriate fee paid in full before any endorsement to a tobacco retailer license is issued or renewed.

(9) Endorsement decisions by the board must be made no later than twenty-one business days following the submittal of a completed affidavit together with the appropriate fee. Rejections of an application for an endorsement under this section may be appealed under the same process provided for other licenses issued by the board.

(10) At no point during any calendar year may the board allow the total number of cigar lounge endorsements in the state to exceed one hundred or the total number of retail tobacco shop endorsements in the state to exceed five hundred. The board must administer the distribution of cigar lounge or retail tobacco shop endorsements and must ensure that the collective number of cigar lounge or retail tobacco shop endorsements located within all counties with a population of over five hundred thousand never exceed one-half of the endorsements allowed under this subsection for each endorsement respectively. Renewing applicants must be given priority over new applicants for endorsements under these limitations.

**NEW SECTION. Sec. 14.** A new section is added to chapter 82.26 RCW to read as follows:

(1) Up to five percent of the fees collected under section 13 of this act must be deposited into the liquor revolving fund created in RCW 66.08.170, to be used to cover the administrative costs of implementing and enforcing the endorsements created in section 13 of this act.

(2) The remaining funds collected under section 13 of this act must be deposited into the tobacco prevention and control account created in RCW 43.79.480 solely for appropriation for tobacco usage prevention and treatment programs.

**Sec. 15.** RCW 70.160.060 and 1995 c 369 s 60 are each amended to read as follows:

This chapter is not intended to:

(1) Regulate smoking in a private enclosed workplace, within a public place, even though such workplace may be visited by nonsmokers, excepting places in which smoking is prohibited by the chief of the Washington state patrol, through the director of fire protection, or by other law, ordinance, or regulation;

(2) Regulate use or smoking of tobacco products, as that term is defined under chapter 82.26 RCW, in a public place or place of employment that holds a valid endorsement to their tobacco products retailer's license under section 13 of this act. The liquor control board has sole enforcement authority under this chapter regarding the designated areas which receive an endorsement under section 13 of this act.

**NEW SECTION. Sec. 16.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2012."

#### MOTION

Senator Hill moved that the following amendment by Senators Hill and Holmquist Newbry to the striking amendment be adopted:

On page 2, after line 23, insert:

"(14) This section takes effect July 1, 2017."

On page 3, after line 32, insert:

"(7) This section takes effect July 1, 2017."

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On page 4, after line 22, insert:

"(4) This section takes effect July 1, 2017."

On page 5, after line 7, insert:

"(5) This section takes effect July 1, 2017."

On page 5, after line 19, insert:

"(4) This section takes effect July 1, 2017."

On page 8, after line 6, insert:

"(6) This section takes effect July 1, 2017."

On page 8, after line 37, insert:

"(5) This section takes effect July 1, 2017."

On page 10, after line 15, insert:

"(4) This section takes effect July 1, 2017."

On page 10, after line 30, insert:

"(3) This section takes effect July 1, 2017."

On page 11, after line 9, insert:

"(4) This section takes effect July 1, 2017."

On page 11, at the beginning of line 12, before "person" insert "(1)"

On page 11, after line 16, insert:

"(2) This section takes effect July 1, 2017."

On page 11, at the beginning of line 19, before "A fee", insert "(1)"

On page 11, after line 27, insert:

"(2) This section takes effect July 1, 2017."

On page 17, line 11, strike all of section 16 and insert:

**"NEW SECTION. Sec. 16.** Sections 13 through 15 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2012."

Senators Hill, Roach and Holmquist Newbry spoke in favor of adoption of the amendment to the striking amendment.

Senators Keiser and Tom spoke against adoption of the amendment to the striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Hill and Holmquist Newbry on page 2, after line 23 to the striking amendment to Senate Bill No. 6623.

The motion by Senator Hill carried and the amendment to the striking amendment was adopted by voice vote.

MOTION

Senator Nelson moved that the following amendment by Senators Nelson and Rolfes to the striking amendment be adopted:

Beginning on page 11, after line 27 of the amendment, strike all of sections 13 through 15

Renumber the remaining section consecutively and correct any internal references accordingly.

On page 17, beginning on line 21 of the title amendment, after "82.24.500," strike all material through "82.26 RCW" on line 22 and insert "and 82.24.530; reenacting and amending RCW 82.24.130"

Senator Nelson spoke in favor of adoption of the amendment to the striking amendment.

Senator Delvin spoke against adoption of the amendment to the striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Nelson and Rolfes on page 11, after line 27 to the striking amendment to Senate Bill No. 6623.

The motion by Senator Nelson failed and the amendment to the striking amendment was not adopted by a rising vote.

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Delvin and Schoesler as amended to Senate Bill No. 6623.

The motion by Senator Delvin carried and the striking amendment as amended was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "Relating to" strike the remainder of the title and insert "tobacco by clarifying cigarettes produced from roll-your-own machines are subject to the cigarette tax and providing for a special license endorsement for cigar lounges and retail tobacconist shops; amending RCW 82.24.010, 82.24.030, 82.24.035, 82.24.050, 82.24.060, 82.24.110, 82.24.120, 82.24.180, 82.24.295, 82.24.500, 82.24.530, and 70.160.060; reenacting and amending RCW 82.24.130; adding new sections to chapter 82.26 RCW; prescribing penalties; providing an effective date; and declaring an emergency."

MOTION

On motion of Senator Delvin, the rules were suspended, Engrossed Senate Bill No. 6623 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Delvin spoke in favor of passage of the bill.

Senator Murray spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Senate Bill No. 6623.

POINT INQUIRY

Senator Padden: "Thank you Mr. President. I believe this measure may require a super-majority vote under the provisions of Initiative 1053. Senate Bill No. 6623 would impose a tax of more than fifteen cents per cigarette when a consumer uses a retail machine to roll his or her own cigarette after purchasing the tobacco from a retailer. The funds are to be deposited in the general fund and the education legacy trust account. The same tax is currently applied to what we think of as standard cigarettes those that are commercially rolled and packaged. Many people buy their tobacco products and roll their own cigarettes at home using a retail machine. Roll your own cigarettes are not currently taxed in this manner and would not be under this legislation. Under current law, a consumer purchases tobacco from a retailer the tobacco product tax applies to this tobacco but not the cigarette tax. The consumer may then choose to use a machine provided by the retailer to roll the tobacco into a cigarette. No cigarette tax is currently paid on this final product. This bill would change that. This bill would require the cigarette tax to be paid on the roll your own cigarette through the retailer's purchase of cigarette stamps. Those who argue that the bill is a clarification of existing law, requiring only a simple majority vote, might cite RCW 70.157.010D which defines cigarettes to include roll your own. However, this definition is for the purpose of describing obligations under the master settlement agreement. The subject of RCW 70.157.010D, the definition in RCW 82.24 ,which deals with cigarette taxes, does not include the roll your own definition. Mr. President, today a consumer can purchase tobacco, roll his or her own cigarette using a retailer machine and the product is not taxed. If this bill passes, on July 1 the same consumer can

purchase a roll your own cigarette in the same manner and the product will be taxed. My inquiry, Mr. President, is to the applications of provisions of Initiative 1053 to this matter and whether a super-majority vote is needed for final passage.”

MOTION

On motion of Senator Eide, further consideration of Engrossed Senate Bill No. 6623 was deferred and the bill held its place on the third reading calendar.

MOTION

On motion of Senator Eide, the Senate reverted to the fourth order of business.

MESSAGE FROM THE HOUSE

April 10, 2012

MR. PRESIDENT:

The House has passed SECOND ENGROSSED SENATE BILL NO. 6378. and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

SIGNED BY THE PRESIDENT

The President signed:

SECOND ENGROSSED SENATE BILL NO. 6378.

PERSONAL PRIVILEGE

Senator Murray: “Thank you Mr. President. I know there’s great interest in what’s going on. We’re simply waiting for staff who’s working very, very hard to draft an amendment that reflects an agreement that we reached this morning in the Governor’s office. Just wanted to let people know what’s going on.”

MESSAGE FROM THE HOUSE

April 10, 2012

MR. PRESIDENT:

The House concurred in the Senate amendment to HOUSE BILL NO. 2824 and passed the bill as amended by the Senate. and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

April 10, 2012

MR. PRESIDENT:

The House passed SUBSTITUTE SENATE BILL NO. 6636 with the following amendment(s): 6636-S AMH HUNT H4778.4

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** A new section is added to chapter 43.88 RCW to read as follows:

(1) The legislature must adopt a four-year balanced budget as follows:

(a) Beginning in the 2013-2015 fiscal biennium, the legislature shall enact a balanced omnibus operating appropriations bill that leaves, in total, a positive ending fund balance in the general fund and related funds.

(b) Beginning in the 2013-2015 fiscal biennium, the projected maintenance level of the omnibus appropriations bill enacted by the legislature shall not exceed the available fiscal resources for the next ensuing fiscal biennium.

(2) For purposes of this section:

(a) "Available fiscal resources" means the beginning general fund and related fund balances and any fiscal resources estimated for the general fund and related funds, adjusted for enacted legislation, and with forecasted revenues adjusted to the greater of (i) the official general fund and related funds revenue forecast for the ensuing biennium, or (ii) the official general fund and related funds forecast for the second fiscal year of the current fiscal biennium, increased by 4.5 percent for each fiscal year of the ensuing biennium;

(b) "Projected maintenance level" means estimated appropriations necessary to maintain the continuing costs of program and service levels either funded in that appropriations bill or mandated by other state or federal law, and the amount of any general fund moneys projected to be transferred to the budget stabilization account pursuant to Article VII, section 12 of the state Constitution, but does not include in the 2013-2015 and 2015-2017 fiscal biennia the costs related to the enhanced funding under the new definition of basic education as established in chapter 548, Laws of 2009, and affirmed by the decision in *Mathew McCleary et al., v. The State of Washington*, 173 Wn.2d 477, 269 P.3d 227, (2012), from which the short-term exclusion of these obligations is solely for the purposes of calculating this estimate and does not in any way indicate an intent to avoid full funding of these obligations;

(c) "Related funds," as used in this section, means the Washington opportunity pathways account and the education legacy trust account.

(3) Subsection (1)(a) and (b) of this section does not apply to an appropriations bill that makes net reductions in general fund and related funds appropriations and is enacted between July 1st and February 15th of any fiscal year.

(4) Subsection (1)(b) of this section does not apply in a fiscal biennium in which money is appropriated from the budget stabilization account.

**Sec. 2.** RCW 82.33.010 and 1990 c 229 s 1 are each amended to read as follows:

(1) The economic and revenue forecast council is hereby created. The council shall consist of two individuals appointed by the governor, the state treasurer, and four individuals, one of whom is appointed by the chairperson of each of the two largest political caucuses in the senate and house of representatives. The chair of the council shall be selected from among the four caucus appointees. The council may select such other officers as the members deem necessary.

(2) The council shall employ an economic and revenue forecast supervisor to supervise the preparation of all economic and revenue forecasts and the presentation of state budget outlooks. As used in this chapter, "supervisor" means the economic and revenue forecast supervisor. Approval by an affirmative vote of at least five members of the council is required for any decisions regarding employment of the supervisor. Employment of the supervisor shall terminate after each term of three years. At the end of the first year of each three- year term the council shall consider extension of the supervisor's term by one year. The council may fix the compensation of the supervisor. The supervisor shall employ staff sufficient to accomplish the purposes of this section.

(3) The economic and revenue forecast council shall oversee the preparation of and approve, by an affirmative vote of at

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least ~~((four))~~ five members, the official, optimistic, and pessimistic state economic and revenue forecasts prepared under RCW 82.33.020. If the council is unable to approve a forecast before a date required in RCW 82.33.020, the supervisor shall submit the forecast without approval and the forecast shall have the same effect as if approved by the council.

(4) The economic and revenue forecast council shall oversee the preparation of and approve, by an affirmative vote of at least five members, the state budget outlook prepared under section 4 of this act. If the council is unable to approve a state budget outlook before a date required in section 4 of this act, the supervisor shall submit the outlook prepared under section 4 of this act without approval and the outlook shall have the same effect as if approved by the council.

(5) A councilmember who does not cast an affirmative vote for approval of the official economic and revenue forecast or the state budget outlook may request, and the supervisor shall provide, an alternative economic and revenue forecast or state budget outlook based on assumptions specified by the member including, for purposes of the state budget outlook, revenues to and expenditures from additional funds.

~~((§))~~ (6) Members of the economic and revenue forecast council shall serve without additional compensation but shall be reimbursed for travel expenses in accordance with RCW 44.04.120 while attending sessions of the council or on official business authorized by the council. Nonlegislative members of the council shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

**Sec. 3.** RCW 82.33.020 and 2005 c 319 s 137 are each amended to read as follows:

(1) Four times each year the supervisor shall prepare, subject to the approval of the economic and revenue forecast council under RCW 82.33.010:

- (a) An official state economic and revenue forecast;
- (b) An unofficial state economic and revenue forecast based on optimistic economic and revenue projections; and
- (c) An unofficial state economic and revenue forecast based on pessimistic economic and revenue projections.

(2) The supervisor shall submit forecasts prepared under this section, along with any unofficial forecasts provided under RCW 82.33.010, to the governor and the members of the committees on ways and means and the chairs of the committees on transportation of the senate and house of representatives, including one copy to the staff of each of the committees, on or before November 20th, February 20th in the even-numbered years, March 20th in the odd-numbered years, June 20th, and September 20th. All forecasts shall include both estimated receipts and estimated revenues in conformance with generally accepted accounting principles as provided by RCW 43.88.037. In odd-numbered years, the period covered by forecasts for the state general fund and related funds must cover the current fiscal biennium and the next ensuing fiscal biennium. In even-numbered years, the period covered by the forecasts for the state general fund and related funds shall be current fiscal and the next two ensuing fiscal biennia.

(3) All agencies of state government shall provide to the supervisor immediate access to all information relating to economic and revenue forecasts. Revenue collection information shall be available to the supervisor the first business day following the conclusion of each collection period.

(4) The economic and revenue forecast supervisor and staff shall co-locate and share information, data, and files with the tax research section of the department of revenue but shall not duplicate the duties and functions of one another.

(5) As part of its forecasts under subsection (1) of this section, the supervisor shall provide estimated revenue from tuition fees as defined in RCW 28B.15.020.

(6) The economic and revenue forecast council must, in consultation with the economic and revenue forecast work group created in RCW 82.33.040, review the existing economic and revenue forecast council revenue model, data, and methodologies and in light of recent economic changes, engage outside experts if necessary, and recommend changes to the economic and revenue forecast council revenue forecasting process to increase confidence and promote accuracy in the revenue forecast. The recommendations are due by September 30, 2012, and every five years thereafter.

**NEW SECTION. Sec. 4.** A new section is added to chapter 82.33 RCW to read as follows:

(1) To facilitate compliance with, and subject to the terms of, section 1 of this act, the state budget outlook work group shall prepare, subject to the approval of the economic and revenue forecast council under RCW 82.33.010, an official state budget outlook for state revenues and expenditures for the general fund and related funds. In odd-numbered years, the period covered by the November state budget outlook shall be the current fiscal biennium and the next ensuing fiscal biennium. In even-numbered years, the period covered by the November state budget outlook shall be the next two ensuing fiscal biennia. The revenue and caseload projections used in the outlook must reflect the most recent official forecasts adopted by the economic and revenue forecast council and the caseload forecast council for the years for which those forecasts are available.

(2) The outlook must:

(a) Estimate revenues to and expenditures from the state general fund and related funds. The estimate of ensuing biennium expenditures must include maintenance items including, but not limited to, continuation of current programs, forecasted growth of current entitlement programs, and actions required by law, including legislation with a future implementation date. Estimates of ensuing biennium expenditures must exclude policy items including, but not limited to, legislation not yet enacted by the legislature, collective bargaining agreements not yet approved by the legislature, and changes to levels of funding for employee salaries and benefits unless those changes are required by statute. Estimated maintenance level expenditures must also exclude costs of court rulings issued during or within fewer than ninety days before the beginning of the current legislative session;

(b) Address major budget and revenue drivers, including trends and variability in these drivers;

(c) Clearly state the assumptions used in the estimates of baseline and projected expenditures and any adjustments made to those estimates;

(d) Clearly state the assumptions used in the baseline revenue estimates and any adjustments to those estimates; and

(e) Include the impact of previously enacted legislation with a future implementation date.

(3) The outlook must also separately include projections based on the revenues and expenditures proposed in the governor's budget documents submitted to the legislature under RCW 43.88.030.

(4) The economic and revenue forecast council shall submit state budget outlooks prepared under this section to the governor and the members of the committees on ways and means of the senate and house of representatives, including one copy to the staff of each of the committees, as required by this section.

(5) Each January, the state budget outlook work group shall also prepare, subject to the approval of the economic and revenue forecast council, a state budget outlook for state revenues and

expenditures that reflects the governor's proposed budget document submitted to the legislature under chapter 43.88 RCW. Within thirty days following enactment of an operating budget by the legislature, the work group shall prepare, subject to the approval of the economic and revenue forecast council, a state budget outlook for state revenues and expenditures that reflects the enacted budget.

(6) All agencies of state government shall provide to the supervisor immediate access to all information relating to state budget outlooks.

(7) The state budget outlook work group must publish its proposed methodology on the economic and revenue forecast council web site. The state budget outlook work group, in consultation with the economic and revenue forecast work group and outside experts if necessary, must analyze the extent to which the proposed methodology for projecting expenditures for the ensuing fiscal biennium may be reliably used to determine the future impact of appropriations and make recommendations to change the outlook process to increase reliability and accuracy. The recommendations are due by December 1, 2013, and every five years thereafter.

**NEW SECTION. Sec. 5.** A new section is added to chapter 82.33 RCW to read as follows:

(1) To promote the free flow of information and to promote legislative input in the preparation of the state budget outlook, immediate access to all information relating to the state budget outlook shall be available to the state budget outlook work group, hereby created. The state budget outlook work group shall consist of one staff member selected by the executive head or chairperson of each of the following agencies or committees:

- (a) Office of financial management;
- (b) Legislative evaluation and accountability program committee;
- (c) Office of the state treasurer;
- (d) Economic and revenue forecast council;
- (e) Caseload forecast council;
- (f) Ways and means committee of the senate; and
- (g) Ways and means committee of the house of representatives.

(2) The state budget outlook work group shall provide technical support to the economic and revenue forecast council. Meetings of the state budget outlook work group may be called by any member of the group for the purpose of assisting the economic and revenue forecast council, reviewing the state budget outlook, or for any other purpose which may assist the economic and revenue forecast council.

**NEW SECTION. Sec. 6.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

On page 1, line 2 of the title, after "biennium;" strike the remainder of the title and insert "amending RCW 82.33.010 and 82.33.020; adding a new section to chapter 43.88 RCW; and adding new sections to chapter 82.33 RCW." and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

#### MOTION

Senator Kastama moved that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6636.

Senators Kastama and Brown spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Kastama that the Senate concur in the House amendment(s) to Substitute Senate Bill No. 6636.

The motion by Senator Kastama carried and the Senate concurred in the House amendment(s) to Substitute Senate Bill No. 6636 by voice vote.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6636, as amended by the House.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6636, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 38; Nays, 9; Absent, 0; Excused, 2.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Litzow, McAuliffe, Morton, Padden, Parlette, Pflug, Prentice, Roach, Rolfes, Schoesler, Sheldon, Shin, Swecker, Tom and Zarelli

Voting nay: Senators Chase, Conway, Kline, Kohl-Welles, Murray, Nelson, Pridemore, Ranker and Regala

Excused: Senators Hewitt and Stevens

SUBSTITUTE SENATE BILL NO. 6636, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### MOTION

On motion of Senator Eide, the Senate advanced to the sixth order of business.

#### SECOND READING

HOUSE BILL NO. 2834, by Representatives Alexander, Springer and Angel

Providing cost savings for local governments by reducing a limited number of reporting requirements.

The measure was read the second time.

#### MOTION

On motion of Senator Murray, the rules were suspended, House Bill No. 2834 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Murray spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2834.

#### ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2834 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Baumgartner, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Padden, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Swecker, Tom and Zarelli

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Excused: Senators Hewitt and Stevens

HOUSE BILL NO. 2834, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

legislature intends to update provisions relating to natural resource management and regulatory programs including the hydraulic project approval program, forest practices act, and state environmental policy act, in order to achieve these opportunities.

SECOND READING  
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

PART ONE  
Hydraulic Project Approvals

MOTION

Senator Fraser moved that Gubernatorial Appointment No. 9261, Tom McDonald, as a member of the Pollution Control/Shorelines Hearings Board, be confirmed.

Senator Fraser spoke in favor of the motion.  
Senator Honeyford spoke against the motion.

**Sec. 101.** RCW 77.55.011 and 2010 c 210 s 26 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Bed" means the land below the ordinary high water lines of state waters. This definition does not include irrigation ditches, canals, storm water runoff devices, or other artificial watercourses except where they exist in a natural watercourse that has been altered artificially.

(2) "Board" means the pollution control hearings board created in chapter 43.21B RCW.

(3) "Commission" means the state fish and wildlife commission.

(4) "Date of receipt" has the same meaning as defined in RCW 43.21B.001.

(5) "Department" means the department of fish and wildlife.

(6) "Director" means the director of the department of fish and wildlife.

(7) "Emergency" means an immediate threat to life, the public, property, or of environmental degradation.

(8) "Hydraulic project" means the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state.

(9) "Imminent danger" means a threat by weather, water flow, or other natural conditions that is likely to occur within sixty days of a request for a permit application.

(10) "Marina" means a public or private facility providing boat moorage space, fuel, or commercial services. Commercial services include but are not limited to overnight or live-aboard boating accommodations.

(11) "Marine terminal" means a public or private commercial wharf located in the navigable water of the state and used, or intended to be used, as a port or facility for the storing, handling, transferring, or transporting of goods to and from vessels.

(12) "Ordinary high water line" means the mark on the shores of all water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years as to mark upon the soil or vegetation a character distinct from the abutting upland. Provided, that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater is the line of mean higher high water and the ordinary high water line adjoining freshwater is the elevation of the mean annual flood.

(13) "Permit" means a hydraulic project approval permit issued under this chapter.

(14) "Sandbars" includes, but is not limited to, sand, gravel, rock, silt, and sediments.

(15) "Small scale prospecting and mining" means the use of only the following methods: Pans; nonmotorized sluice boxes; concentrators; and minirocker boxes for the discovery and recovery of minerals.

(16) "Spartina," "purple loosestrife," and "aquatic noxious weeds" have the same meanings as defined in RCW 17.26.020.

(17) "Streambank stabilization" means those projects that prevent or limit erosion, slippage, and mass wasting. These projects include, but are not limited to, bank resloping, log and debris relocation or removal, planting of woody vegetation, bank

APPOINTMENT OF TOM MCDONALD

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9261, Tom McDonald as a member of the Pollution Control/Shorelines Hearings Board.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9261, Tom McDonald as a member of the Pollution Control/Shorelines Hearings Board and the appointment was confirmed by the following vote: Yeas, 29; Nays, 18; Absent, 0; Excused, 2.

Voting yea: Senators Brown, Chase, Conway, Eide, Fraser, Frockt, Hargrove, Harper, Hatfield, Haugen, Hill, Hobbs, Kastama, Keiser, Kilmer, Kline, Kohl-Welles, McAuliffe, Murray, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rolfes, Shin and Tom

Voting nay: Senators Baumgartner, Becker, Benton, Carrell, Delvin, Ericksen, Fain, Holmquist Newbry, Honeyford, King, Litzow, Morton, Padden, Parlette, Schoesler, Sheldon, Swecker and Zarelli

Excused: Senators Hewitt and Stevens

Gubernatorial Appointment No. 9261, Tom McDonald, having received the constitutional majority was declared confirmed as a member of the Pollution Control/Shorelines Hearings Board.

MOTION

On motion of Senator Eide, the Senate reverted to the fourth order of business.

MESSAGE FROM THE HOUSE

April 10, 2012

MR. PRESIDENT:

The House passed SECOND ENGROSSED SUBSTITUTE SENATE BILL NO. 6406 with the following amendment(s): 6406-S.E2 AMH TAYL JACA 080; 6406-S.E2 AMH BLAK H4797.1

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature finds that significant opportunities exist to modify programs that provide for management and protection of the state's natural resources, including the state's forests, fish, and wildlife, in order to streamline regulatory processes and achieve program efficiencies while at the same time increasing the sustainability of program funding and maintaining current levels of natural resource protection. The

protection using rock or woody material or placement of jetties or groins, gravel removal, or erosion control.

(18) "Tide gate" means a one-way check valve that prevents the backflow of tidal water.

(19) "Waters of the state" and "state waters" means all salt and freshwaters waterward of the ordinary high water line and within the territorial boundary of the state.

(20) "Emergency permit" means a verbal hydraulic project approval or the written follow-up to the verbal approval issued to a person under RCW 77.55.021(12).

(21) "Expedited permit" means a hydraulic project approval issued to a person under RCW 77.55.021 (14) and (16).

(22) "Forest practices hydraulic project" means a hydraulic project that requires a forest practices application or notification under chapter 76.09 RCW.

(23) "Multiple site permit" means a hydraulic project approval issued to a person under RCW 77.55.021 for hydraulic projects occurring at more than one specific location and which includes site-specific requirements.

(24) "Pamphlet hydraulic project" means a hydraulic project for the removal or control of aquatic noxious weeds conducted under the aquatic plants and fish pamphlet authorized by RCW 77.55.081, or for mineral prospecting and mining conducted under the gold and fish pamphlet authorized by RCW 77.55.091.

(25) "Permit modification" means a hydraulic project approval issued to a person under RCW 77.55.021 that extends, renews, or changes the conditions of a previously issued hydraulic project approval.

**Sec. 102.** RCW 77.55.021 and 2010 c 210 s 27 are each amended to read as follows:

(1) Except as provided in RCW 77.55.031, 77.55.051, ~~((and))~~ 77.55.041, and section 201 of this act, in the event that any person or government agency desires to undertake a hydraulic project, the person or government agency shall, before commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life.

(2) A complete written application for a permit may be submitted in person or by registered mail and must contain the following:

(a) General plans for the overall project;

(b) Complete plans and specifications of the proposed construction or work within the mean higher high water line in saltwater or within the ordinary high water line in freshwater;

(c) Complete plans and specifications for the proper protection of fish life; ~~((and))~~

(d) Notice of compliance with any applicable requirements of the state environmental policy act, unless otherwise provided for in this chapter; and

(e) Payment of all applicable application fees charged by the department under section 103 of this act.

(3) The department may establish direct billing accounts or other funds transfer methods with permit applicants to satisfy the fee payment requirements of section 103 of this act.

(4) The department may accept complete, written applications as provided in this section for multiple site permits and may issue these permits. For multiple site permits, each specific location must be identified.

(5) With the exception of emergency permits as provided in subsection (12) of this section, applications for permits must be submitted to the department's headquarters office in Olympia. Requests for emergency permits as provided in subsection (12) of this section may be made to the permitting biologist assigned to the location in which the emergency occurs, to the department's regional office in which the emergency occurs, or to the department's headquarters office.

(6) Except as provided for emergency permits in subsection (12) of this section, the department may not proceed with permit review until all fees are paid in full as required in section 103 of this act.

(7)(a) Protection of fish life is the only ground upon which approval of a permit may be denied or conditioned. Approval of a permit may not be unreasonably withheld or unreasonably conditioned.

~~((b))~~ ~~((8))~~ ~~((10))~~ ~~and~~ (12) through (14) and (16) of this section, the department has forty-five calendar days upon receipt of a complete application to grant or deny approval of a permit. The forty-five day requirement is suspended if:

(i) After ten working days of receipt of the application, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project;

(ii) The site is physically inaccessible for inspection;

(iii) The applicant requests a delay; or

(iv) The department is issuing a permit for a storm water discharge and is complying with the requirements of RCW 77.55.161(3)(b).

~~((b))~~ ~~((c))~~ Immediately upon determination that the forty-five day period is suspended under (b) of this subsection, the department shall notify the applicant in writing of the reasons for the delay.

~~((e))~~ ~~((d))~~ The period of forty-five calendar days may be extended if the permit is part of a multiagency permit streamlining effort and all participating permitting agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days.

~~((4))~~ ~~((8))~~ If the department denies approval of a permit, the department shall provide the applicant a written statement of the specific reasons why and how the proposed project would adversely affect fish life.

(a) Except as provided in (b) of this subsection, issuance, denial, conditioning, or modification of a permit shall be appealable to the board within thirty days from the date of receipt of the decision as provided in RCW 43.21B.230.

(b) Issuance, denial, conditioning, or modification of a permit may be informally appealed to the department within thirty days from the date of receipt of the decision. Requests for informal appeals must be filed in the form and manner prescribed by the department by rule. A permit decision that has been informally appealed to the department is appealable to the board within thirty days from the date of receipt of the department's decision on the informal appeal.

~~((5))~~ ~~((9))~~(a) The permittee must demonstrate substantial progress on construction of that portion of the project relating to the permit within two years of the date of issuance.

(b) Approval of a permit is valid for ~~((a period of))~~ up to five years from the date of issuance, except as provided in (c) of this subsection and in RCW 77.55.151.

(c) A permit remains in effect without need for periodic renewal for hydraulic projects that divert water for agricultural irrigation or stock watering purposes and that involve seasonal construction or other work. A permit for streambank stabilization projects to protect farm and agricultural land as defined in RCW 84.34.020 remains in effect without need for periodic renewal if the problem causing the need for the streambank stabilization occurs on an annual or more frequent basis. The permittee must notify the appropriate agency before commencing the construction or other work within the area covered by the permit.

~~((6))~~ ~~((10))~~ The department may, after consultation with the permittee, modify a permit due to changed conditions. A modification under this subsection is not subject to the fees provided under section 103 of this act. The modification is appealable as provided in subsection ~~((4))~~ ~~((8))~~ of this section. For a hydraulic project~~((s))~~ that diverts water for agricultural irrigation or stock

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watering purposes, ~~((#))~~ when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the department to show that changed conditions warrant the modification in order to protect fish life.

~~((7))~~ (11) A permittee may request modification of a permit due to changed conditions. The request must be processed within forty-five calendar days of receipt of the written request and payment of applicable fees under section 103 of this act. A decision by the department is appealable as provided in subsection ~~((4))~~ (8) of this section. For a hydraulic project~~(s)~~ that diverts water for agricultural irrigation or stock watering purposes, ~~((#))~~ when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the permittee to show that changed conditions warrant the requested modification and that such a modification will not impair fish life.

~~((8))~~ (12)(a) The department, the county legislative authority, or the governor may declare and continue an emergency. If the county legislative authority declares an emergency under this subsection, it shall immediately notify the department. A declared state of emergency by the governor under RCW 43.06.010 shall constitute a declaration under this subsection.

(b) The department, through its authorized representatives, shall issue immediately, upon request, ~~((oral))~~ verbal approval for a stream crossing, or work to remove any obstructions, repair existing structures, restore streambanks, protect fish life, or protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written permit prior to commencing work. Conditions of the emergency ~~((oral))~~ verbal permit must be ~~((established by the department and))~~ reduced to writing within thirty days and complied with as provided for in this chapter.

(c) The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

~~((9))~~ (d) The department may not charge a person requesting an emergency permit any of the fees authorized by section 103 of this act until after the emergency permit is issued and reduced to writing.

(13) All state and local agencies with authority under this chapter to issue permits or other authorizations in connection with emergency water withdrawals and facilities authorized under RCW 43.83B.410 shall expedite the processing of such permits or authorizations in keeping with the emergency nature of such requests and shall provide a decision to the applicant within fifteen calendar days of the date of application.

~~((10))~~ (14) The department or the county legislative authority may determine an imminent danger exists. The county legislative authority shall notify the department, in writing, if it determines that an imminent danger exists. In cases of imminent danger, the department shall issue an expedited written permit, upon request, for work to remove any obstructions, repair existing structures, restore banks, protect fish resources, or protect property. Expedited permit requests require a complete written application as provided in subsection (2) of this section and must be issued within fifteen calendar days of the receipt of a complete written application. Approval of an expedited permit is valid for up to sixty days from the date of issuance. The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

~~((11))~~ (15)(a) For any property, except for property located on a marine shoreline, that has experienced at least two consecutive years of flooding or erosion that has damaged or has threatened to damage a major structure, water supply system, septic system, or

access to any road or highway, the county legislative authority may determine that a chronic danger exists. The county legislative authority shall notify the department, in writing, when it determines that a chronic danger exists. In cases of chronic danger, the department shall issue a permit, upon request, for work necessary to abate the chronic danger by removing any obstructions, repairing existing structures, restoring banks, restoring road or highway access, protecting fish resources, or protecting property. Permit requests must be made and processed in accordance with subsections (2) and ~~((3))~~ (7) of this section.

(b) Any projects proposed to address a chronic danger identified under (a) of this subsection that satisfies the project description identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions of the state environmental policy act, chapter 43.21C RCW. However, the project is subject to the review process established in RCW 77.55.181(3) as if it were a fish habitat improvement project.

~~((12))~~ (16) The department may issue an expedited written permit in those instances where normal permit processing would result in significant hardship for the applicant or unacceptable damage to the environment. Expedited permit requests require a complete written application as provided in subsection (2) of this section and must be issued within fifteen calendar days of the receipt of a complete written application. Approval of an expedited permit is valid for up to sixty days from the date of issuance. The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

NEW SECTION. Sec. 103. A new section is added to chapter 77.55 RCW to read as follows:

(1) The department shall charge an application fee of one hundred fifty dollars for a hydraulic project permit or permit modification issued under RCW 77.55.021 where the project is located at or below the ordinary high water line. The application fee established under this subsection may not be charged after June 30, 2017.

(2) The following hydraulic projects are exempt from all fees listed under this section:

(a) Hydraulic projects approved under applicant-funded contracts with the department that pay for the costs of processing those projects;

(b) If sections 201 through 203 of this act are enacted into law by June 30, 2012, forest practices hydraulic projects;

(c) Pamphlet hydraulic projects;

(d) Mineral prospecting and mining activities; and

(e) Hydraulic projects occurring on farm and agricultural land, as that term is defined in RCW 84.34.020.

(3) All fees collected under this section must be deposited in the hydraulic project approval account created in section 104 of this act.

(4) The fee provisions contained in this section are prospective only. The department of fish and wildlife may not charge fees for hydraulic project permits issued under this title prior to the effective date of this section.

(5) This section expires June 30, 2017.

NEW SECTION. Sec. 104. A new section is added to chapter 77.55 RCW to read as follows:

(1) The hydraulic project approval account is created in the state treasury. All receipts from application fees for hydraulic project approval applications collected under section 103 of this act must be deposited into the account.

(2) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the hydraulic project approval account may be spent only after appropriation.

(3) Expenditures from the hydraulic project approval account may be used only to fund department activities relating to

implementing and operating the hydraulic project approval program.

**Sec. 105.** RCW 77.55.151 and 2005 c 146 s 502 are each amended to read as follows:

(1) (For a marina or marine terminal in existence on June 6, 1996, or a marina or marine terminal that has received a permit for its initial construction, a renewable, five-year permit shall be issued, upon request, for regular maintenance activities of the marina or marine terminal.

(2) Upon construction of a new marina or marine terminal that has received a permit, a renewable, five-year permit shall be issued, upon request, for regular maintenance activities of the marina or marine terminal.

(3) For the purposes of this section, regular maintenance activities are only those activities necessary to restore the marina or marine terminal to the conditions approved in the initial permit. These activities may include, but are not limited to, dredging, piling replacement, and float replacement.

(4)) Upon application under RCW 77.55.021, the department shall issue a renewable, five-year permit to a marina or marine terminal for its regular maintenance activities identified in the application.

(2) For the purposes of this section, regular maintenance activities may include, but are not limited to:

(a) Maintenance or repair of a boat ramp, launch, or float within the existing footprint;

(b) Maintenance or repair of an existing overwater structure within the existing footprint;

(c) Maintenance or repair of boat lifts or railway launches;

(d) Maintenance or repair of pilings, including the replacement of bumper pilings;

(e) Dredging of less than fifty cubic yards;

(f) Maintenance or repair of shoreline armoring or bank protection;

(g) Maintenance or repair of wetland, riparian, or estuarine habitat; and

(h) Maintenance or repair of an existing outfall.

(3) The five-year permit must include a requirement that a fourteen-day notice be given to the department before regular maintenance activities begin.

(4) A permit under this section is subject to the application fee provided in section 103 of this act.

**Sec. 106.** RCW 77.55.231 and 2005 c 146 s 601 are each amended to read as follows:

(1) Conditions imposed upon a permit must be reasonably related to the project. The permit conditions must ensure that the project provides proper protection for fish life, but the department may not impose conditions that attempt to optimize conditions for fish life that are out of proportion to the impact of the proposed project.

(2) The permit must contain provisions allowing for minor modifications to the plans and specifications without requiring reissuance of the permit.

(3) The permit must contain provisions that allow for minor modifications to the required work timing without requiring the reissuance of the permit. "Minor modifications to the required work timing" means a minor deviation from the timing window set forth in the permit when there are no spawning or incubating fish present within the vicinity of the project.

**NEW SECTION. Sec. 107.** A new section is added to chapter 77.55 RCW to read as follows:

The department shall prepare and distribute technical and educational information to the general public to assist the public in complying with the requirements of this chapter, including the changes resulting from this act.

**NEW SECTION. Sec. 108.** A new section is added to chapter 77.55 RCW to read as follows:

The department shall develop a system to provide local governments, affected tribes, and other interested parties with access to hydraulic project approval applications.

**NEW SECTION. Sec. 109.** The director of fish and wildlife shall adopt any rules required or deemed necessary to implement RCW 77.55.011, 77.55.021, 77.55.151, 77.55.231, and sections 103, 104, 107, and 108 of this act.

## PART TWO

### Hydraulic Project

#### Approval and Forest Practices Integration

**NEW SECTION. Sec. 201.** A new section is added to chapter 77.55 RCW to read as follows:

(1) The requirements of this chapter do not apply to any forest practices hydraulic project, or to any activities that are associated with such a project, upon incorporation of fish protection standards adopted under this chapter into the forest practices rules and approval of technical guidance as required under RCW 76.09.040, at which time these projects are regulated under chapter 76.09 RCW.

(2) The department must continue to conduct regulatory and enforcement activities under this chapter for forest practices hydraulic projects until the forest practices board incorporates fish protection standards adopted under this chapter into the forest practices rules and approves technical guidance as required under RCW 76.09.040.

(3) By December 31, 2013, the department shall adopt rules establishing the procedures for the concurrence review process consistent with section 202 of this act. The concurrence review process must allow the department up to thirty days to review forest practices hydraulic projects meeting the criteria under section 202(2) (a) and (b) of this act for consistency with fish protection standards.

(4) The department shall notify the department of natural resources prior to beginning a rule-making process that may affect activities regulated under chapter 76.09 RCW.

(5) The department shall act consistent with appendix M of the forest and fish report, as the term "forests and fish report" is defined in RCW 76.09.020, when modifying fish protection rules that may affect activities regulated under chapter 76.09 RCW.

(6) The department may review and provide comments on any forest practices application. The department shall review, and either verify that the review has occurred or comment on, forest practices applications that include a forest practices hydraulic project involving fish bearing waters or shorelines of the state, as that term is defined in RCW 90.58.030. Prior to commenting and whenever reasonably practicable, the department shall communicate with the applicant regarding the substance of the project.

(7) The department shall participate in effectiveness monitoring for forest practices hydraulic projects through its role in the review processes provided under WAC 222-08-160 as it existed on the effective date of this section.

**NEW SECTION. Sec. 202.** A new section is added to chapter 76.09 RCW to read as follows:

(1) The department may request information and technical assistance from the department of fish and wildlife regarding any forest practices hydraulic project regulated under this chapter.

(2) A concurrence review process is established for certain forest practices hydraulic projects, as follow:

(a) After receiving an application under RCW 76.09.050 that includes a forest practices hydraulic project involving one or more water crossing structures meeting the criteria of (b) of this

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subsection, the department shall provide all necessary information provided by the applicant to the department of fish and wildlife for concurrence review consistent with section 201(3) of this act. The required information must be transmitted by the department to the department of fish and wildlife as soon as practicable following the receipt of a complete application.

(b) The concurrence review process applies only to:

(i) Culvert installation or replacement, and repair at or below the bankfull width, as that term is defined in WAC 222-16-010 on the effective date of this section, in fish bearing rivers and streams that exceed five percent gradient;

(ii) Bridge construction or replacement, and repair at or below the bankfull width, of fish bearing unconfined streams; or

(iii) Fill within the flood level - 100 year, as that term is defined in WAC 222-16-010, as it existed on the effective date of this section, of fish bearing unconfined streams.

**Sec. 203.** RCW 76.09.040 and 2010 c 188 s 4 are each amended to read as follows:

(1)(a) Where necessary to accomplish the purposes and policies stated in RCW 76.09.010, and to implement the provisions of this chapter, the board shall adopt forest practices rules pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in this section that:

(i) Establish minimum standards for forest practices;

(ii) Provide procedures for the voluntary development of resource management plans which may be adopted as an alternative to the minimum standards in (a)(i) of this subsection if the plan is consistent with the purposes and policies stated in RCW 76.09.010 and the plan meets or exceeds the objectives of the minimum standards;

(iii) Set forth necessary administrative provisions;

(iv) Establish procedures for the collection and administration of forest practice fees as set forth by this chapter; and

(v) Allow for the development of watershed analyses.

(b) Forest practices rules pertaining to water quality protection shall be adopted by the board after reaching agreement with the director of the department of ecology or the director's designee on the board with respect ~~((hereto))~~ to these rules. All other forest practices rules shall be adopted by the board.

(c) Forest practices rules shall be administered and enforced by either the department or the local governmental entity as provided in this chapter. Such rules shall be adopted and administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

(2)(a) The board shall prepare proposed forest practices rules consistent with this section and chapter 34.05 RCW. In addition to any forest practices rules relating to water quality protection proposed by the board, the department of ecology may submit to the board proposed forest practices rules relating to water quality protection.

(b)(i) ((Prior to initiating the rule-making process, the proposed rules shall be submitted for review and comments to the department of fish and wildlife and to the counties of the state. After receipt of the proposed forest practices rules, the department of fish and wildlife and the counties of the state shall have thirty days in which to review and submit comments to the board, and to the department of ecology with respect to its proposed rules relating to water quality protection.

(ii) After the expiration of the thirty day period,) The board ((and the department of ecology)) shall ((jointly)) hold one or more hearings on the proposed rules pursuant to chapter 34.05 RCW. Any county representative may propose specific forest practices rules relating to problems existing within the county at the hearings.

~~((iii))~~ (ii) The board may adopt and the department of ecology may approve such proposals if they find the proposals are consistent with the purposes and policies of this chapter.

(3)(a) The board shall incorporate into the forest practices rules those fish protection standards in the rules adopted under chapter 77.55 RCW, as the rules existed on the effective date of this section, that are applicable to activities regulated under the forest practices rules. If fish protection standards are incorporated by reference, the board shall minimize administrative processes by utilizing the exception from the administrative procedures controlling significant legislative rules under RCW 34.05.328(5)(b)(iii) for the incorporation of rules adopted by other state agencies.

(b) Thereafter, the board shall incorporate into the forest practices rules any changes to those fish protection standards in the rules adopted under chapter 77.55 RCW that are: (i) Adopted consistent with section 201 of this act; and (ii) applicable to activities regulated under the forest practices rules. If fish protection standards are incorporated by reference, the board shall minimize administrative processes by utilizing the exception from the administrative procedures controlling significant legislative rules under RCW 34.05.328(5)(b)(iii) for the incorporation of rules adopted by other state agencies.

(c) The board shall establish and maintain technical guidance in the forest practices board manual, as provided under WAC 222-12-090 as it existed on the effective date of this section, to assist with implementation of the standards incorporated into the forest practices rules under this section. The guidance must include best management practices and standard techniques to ensure fish protection.

(d) The board must complete the requirements of (a) of this subsection and establish initial technical guidance under (c) of this subsection by December 31, 2013.

(4)(a) The board shall establish by rule a program for the acquisition of riparian open space and critical habitat for threatened or endangered species as designated by the board. Acquisition must be a conservation easement. Lands eligible for acquisition are forest lands within unconfined channel migration zones or forest lands containing critical habitat for threatened or endangered species as designated by the board. Once acquired, these lands may be held and managed by the department, transferred to another state agency, transferred to an appropriate local government agency, or transferred to a private nonprofit nature conservancy corporation, as defined in RCW 64.04.130, in fee or transfer of management obligation. The board shall adopt rules governing the acquisition by the state or donation to the state of such interest in lands including the right of refusal if the lands are subject to unacceptable liabilities. The rules shall include definitions of qualifying lands, priorities for acquisition, and provide for the opportunity to transfer such lands with limited warranties and with a description of boundaries that does not require full surveys where the cost of securing the surveys would be unreasonable in relation to the value of the lands conveyed. The rules shall provide for the management of the lands for ecological protection or fisheries enhancement. For the purposes of conservation easements entered into under this section, the following apply:

(i) For conveyances of a conservation easement in which the landowner conveys an interest in the trees only, the compensation must include the timber value component, as determined by the cruised volume of any timber located within the channel migration zone or critical habitat for threatened or endangered species as designated by the board, multiplied by the appropriate quality code stumpage value for timber of the same species shown on the appropriate table used for timber harvest excise tax purposes under RCW 84.33.091;

(ii) For conveyances of a conservation easement in which the landowner conveys interests in both land and trees, the compensation must include the timber value component in (a)(i) of this subsection plus such portion of the land value component as determined just and equitable by the department. The land value component must be the acreage of qualifying channel migration zone or critical habitat for threatened or endangered species as determined by the board, to be conveyed, multiplied by the average per acre value of all commercial forest land in western Washington or the average for eastern Washington, whichever average is applicable to the qualifying lands. The department must determine the western and eastern Washington averages based on the land value tables established by RCW 84.33.140 and revised annually by the department of revenue.

(b) Subject to appropriations sufficient to cover the cost of such an acquisition program and the related costs of administering the program, the department must establish a conservation easement in land that an owner tenders for purchase; provided that such lands have been taxed as forest lands and are located within an unconfined channel migration zone or contain critical habitat for threatened or endangered species as designated by the board. Lands acquired under this section shall become riparian or habitat open space. These acquisitions shall not be deemed to trigger the compensating tax of chapters 84.33 and 84.34 RCW.

(c) Instead of offering to sell interests in qualifying lands, owners may elect to donate the interests to the state.

(d) Any acquired interest in qualifying lands by the state under this section shall be managed as riparian open space or critical habitat.

**NEW SECTION. Sec. 204.** A new section is added to chapter 77.55 RCW to read as follows:

(1) The department and the department of natural resources shall enter into and maintain a memorandum of agreement between the two agencies that describes how to implement integration of hydraulic project approvals into forest practices applications consistent with this act.

(2) The initial memorandum of agreement required under subsection (1) of this section between the two departments must be executed by December 31, 2012. The memorandum of agreement may be amended as agreed to by the two departments.

(3) The department and the department of natural resources shall enter into and maintain an interagency contract to ensure implementation of this act and the memorandum of agreement between the two agencies required under subsection (1) of this section. The contract must include funding provisions for the department's review of forest practices hydraulic projects.

**Sec. 205.** RCW 76.09.050 and 2011 c 207 s 1 are each amended to read as follows:

(1) The board shall establish by rule which forest practices shall be included within each of the following classes:

Class I: Minimal or specific forest practices that have no direct potential for damaging a public resource and that may be conducted without submitting an application or a notification except that when the regulating authority is transferred to a local governmental entity, those Class I forest practices that involve timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, are processed as Class IV forest practices, but are not subject to environmental review under chapter 43.21C RCW;

Class II: Forest practices which have a less than ordinary potential for damaging a public resource that may be conducted without submitting an application and may begin five calendar days, or such lesser time as the department may determine, after written notification by the operator, in the manner, content, and form as prescribed by the department, is received by the department. However, the work may not begin until all forest practice fees

required under RCW 76.09.065 have been received by the department. Class II shall not include forest practices:

(a) On forest lands that are being converted to another use;

(b) ((Which require approvals under the provisions of the hydraulics act, RCW 77.55.021;

(c)) Within "shorelines of the state" as defined in RCW 90.58.030;

~~((d))~~ (c) Excluded from Class II by the board; or

~~((e))~~ (d) Including timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, which are Class IV;

Class III: Forest practices other than those contained in Class I, II, or IV. A Class III application must be approved or disapproved by the department according to the following timelines; however, the applicant may not begin work on the forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department:

~~(a) Within thirty calendar days from the date the department receives the application~~~~((-- However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department))~~ if the application is not subject to concurrence review by the department of fish and wildlife under section 202 of this act; and

(b) Within thirty days of the completion of the concurrence review by the department of fish and wildlife if the application is subject to concurrence review by the department of fish and wildlife under section 202 of this act;

Class IV: Forest practices other than those contained in Class I or II:

(a) On forest lands that are being converted to another use;

(b) On lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development;

(c) That involve timber harvesting or road construction on forest lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except where the forest landowner provides:

(i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 or 84.34 RCW; or

(ii) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application; and/or

(d) Which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation shall be made within ~~((ten days from the date the department receives the application: PROVIDED, That))~~ the timelines established in RCW 43.21C.037; however, nothing herein shall be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. Unless the application is subject to concurrence review by the department of fish and wildlife under section 202 of this act, a Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application~~((-- unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty calendar days from the date the department receives the application, unless the commissioner of public lands, through the~~

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~~promulgation of a formal order, determines that the process cannot be completed within such period)). If a Class IV application is subject to concurrence review by the department of fish and wildlife under section 202 of this act, then the application must be approved or disapproved by the department within thirty calendar days from the completion of the concurrence review by the department of fish and wildlife. However, the department may extend the timelines applicable to the approval or disapproval of the application an additional thirty calendar days if the department determines that a detailed statement must be made, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such a period.~~ However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department.

Forest practices under Classes I, II, and III are exempt from the requirements for preparation of a detailed statement under the state environmental policy act.

(2) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, no Class II, Class III, or Class IV forest practice shall be commenced or continued after January 1, 1975, unless the department has received a notification with regard to a Class II forest practice or approved an application with regard to a Class III or Class IV forest practice containing all information required by RCW 76.09.060 as now or hereafter amended. However, in the event forest practices regulations necessary for the scheduled implementation of this chapter and RCW 90.48.420 have not been adopted in time to meet such schedules, the department shall have the authority to regulate forest practices and approve applications on such terms and conditions consistent with this chapter and RCW 90.48.420 and the purposes and policies of RCW 76.09.010 until applicable forest practices regulations are in effect.

(3) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, if a notification or application is delivered in person to the department by the operator or the operator's agent, the department shall immediately provide a dated receipt thereof. In all other cases, the department shall immediately mail a dated receipt to the operator.

(4) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, forest practices shall be conducted in accordance with the forest practices regulations, orders and directives as authorized by this chapter or the forest practices regulations, and the terms and conditions of any approved applications.

(5) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, the department of natural resources shall notify the applicant in writing of either its approval of the application or its disapproval of the application and the specific manner in which the application fails to comply with the provisions of this section or with the forest practices regulations. Except as provided otherwise in this section, if the department fails to either approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the operation may be commenced: PROVIDED, That this provision shall not apply to applications which are neither approved nor disapproved pursuant to the provisions of subsection (7) of this section: PROVIDED, FURTHER, That if seasonal field conditions prevent the department from being able to properly evaluate the application, the department may issue an approval conditional upon further review within sixty days(= PROVIDED, FURTHER, That the department shall have until April 1, 1975, to approve or disapprove an application involving forest practices allowed to continue to April 1, 1975, under the provisions of subsection (2) of this section)). Upon

receipt of any notification or any satisfactorily completed application the department shall in any event no later than two business days after such receipt transmit a copy to the departments of ecology and fish and wildlife, and to the county, city, or town in whose jurisdiction the forest practice is to be commenced. Any comments by such agencies shall be directed to the department of natural resources.

(6) For those forest practices regulated by the board and the department, if the county, city, or town believes that an application is inconsistent with this chapter, the forest practices regulations, or any local authority consistent with RCW 76.09.240 as now or hereafter amended, it may so notify the department and the applicant, specifying its objections.

(7) For those forest practices regulated by the board and the department, the department shall not approve portions of applications to which a county, city, or town objects if:

(a) The department receives written notice from the county, city, or town of such objections within fourteen business days from the time of transmittal of the application to the county, city, or town, or one day before the department acts on the application, whichever is later; and

(b) The objections relate to forest lands that are being converted to another use.

The department shall either disapprove those portions of such application or appeal the county, city, or town objections to the appeals board. If the objections related to (b) of this subsection are based on local authority consistent with RCW 76.09.240 as now or hereafter amended, the department shall disapprove the application until such time as the county, city, or town consents to its approval or such disapproval is reversed on appeal. The applicant shall be a party to all department appeals of county, city, or town objections. Unless the county, city, or town either consents or has waived its rights under this subsection, the department shall not approve portions of an application affecting such lands until the minimum time for county, city, or town objections has expired.

(8) For those forest practices regulated by the board and the department, in addition to any rights under the above paragraph, the county, city, or town may appeal any department approval of an application with respect to any lands within its jurisdiction. The appeals board may suspend the department's approval in whole or in part pending such appeal where there exists potential for immediate and material damage to a public resource.

(9) For those forest practices regulated by the board and the department, appeals under this section shall be made to the appeals board in the manner and time provided in RCW 76.09.205. In such appeals there shall be no presumption of correctness of either the county, city, or town or the department position.

(10) For those forest practices regulated by the board and the department, the department shall, within four business days notify the county, city, or town of all notifications, approvals, and disapprovals of an application affecting lands within the county, city, or town, except to the extent the county, city, or town has waived its right to such notice.

(11) For those forest practices regulated by the board and the department, a county, city, or town may waive in whole or in part its rights under this section, and may withdraw or modify any such waiver, at any time by written notice to the department.

(12) Notwithstanding subsections (2) through (5) of this section, forest practices applications or notifications are not required for exotic insect and disease control operations conducted in accordance with RCW 76.09.060(8) where eradication can reasonably be expected.

**Sec. 206.** RCW 76.09.060 and 2007 c 480 s 11 and 2007 c 106 s 1 are each reenacted and amended to read as follows:

(1) The department shall prescribe the form and contents of the notification and application. The forest practices rules shall specify by whom and under what conditions the notification and application shall be signed or otherwise certified as acceptable. Activities conducted by the department or a contractor under the direction of the department under the provisions of RCW 76.04.660, shall be exempt from the landowner signature requirement on any forest practices application required to be filed. The application or notification shall be delivered in person to the department, sent by first-class mail to the department or electronically filed in a form defined by the department. The form for electronic filing shall be readily convertible to a paper copy, which shall be available to the public pursuant to chapter 42.56 RCW. The information required may include, but is not limited to:

(a) Name and address of the forest landowner, timber owner, and operator;

(b) Description of the proposed forest practice or practices to be conducted;

(c) Legal description and tax parcel identification numbers of the land on which the forest practices are to be conducted;

(d) Planimetric and topographic maps showing location and size of all lakes and streams and other public waters in and immediately adjacent to the operating area and showing all existing and proposed roads and major tractor roads;

(e) Description of the silvicultural, harvesting, or other forest practice methods to be used, including the type of equipment to be used and materials to be applied;

(f) For an application or notification submitted on or after the effective date of section 202 of this act that includes a forest practices hydraulic project, plans and specifications for the forest practices hydraulic project to ensure the proper protection of fish life;

(g) Proposed plan for reforestation and for any revegetation necessary to reduce erosion potential from roadsides and yarding roads, as required by the forest practices rules;

~~((g))~~ (h) Soil, geological, and hydrological data with respect to forest practices;

~~((h))~~ (i) The expected dates of commencement and completion of all forest practices specified in the application;

~~((i))~~ (j) Provisions for continuing maintenance of roads and other construction or other measures necessary to afford protection to public resources;

~~((j))~~ (k) An affirmation that the statements contained in the notification or application are true; and

~~((k))~~ (l) All necessary application or notification fees.

(2) Long range plans may be submitted to the department for review and consultation.

(3) The application for a forest practice or the notification of a forest practice is subject to the reforestation requirement of RCW 76.09.070.

(a) If the application states that any land will be or is intended to be converted:

(i) The reforestation requirements of this chapter and of the forest practices rules shall not apply if the land is in fact converted unless applicable alternatives or limitations are provided in forest practices rules issued under RCW 76.09.070;

(ii) Completion of such forest practice operations shall be deemed conversion of the lands to another use for purposes of chapters 84.33 and 84.34 RCW unless the conversion is to a use permitted under a current use tax agreement permitted under chapter 84.34 RCW;

(iii) The forest practices described in the application are subject to applicable county, city, town, and regional governmental authority permitted under RCW 76.09.240 as well as the forest practices rules.

(b) Except as provided elsewhere in this section, if the landowner harvests without an approved application or notification or the landowner does not state that any land covered by the application or notification will be or is intended to be converted, and the department or the county, city, town, or regional governmental entity becomes aware of conversion activities to a use other than commercial timber operations, as that term is defined in RCW 76.09.020, then the department shall send to the department of ecology and the appropriate county, city, town, and regional governmental entities the following documents:

(i) A notice of a conversion to nonforestry use;

(ii) A copy of the applicable forest practices application or notification, if any; and

(iii) Copies of any applicable outstanding final orders or decisions issued by the department related to the forest practices application or notification.

(c) Failure to comply with the reforestation requirements contained in any final order or decision shall constitute a removal of designation under the provisions of RCW 84.33.140, and a change of use under the provisions of RCW 84.34.080, and, if applicable, shall subject such lands to the payments and/or penalties resulting from such removals or changes.

(d) Conversion to a use other than commercial forest product operations within six years after approval of the forest practices application or notification without the consent of the county, city, or town shall constitute a violation of each of the county, municipal city, town, and regional authorities to which the forest practice operations would have been subject if the application had stated an intent to convert.

(e) Land that is the subject of a notice of conversion to a nonforestry use produced by the department and sent to the department of ecology and a local government under this subsection is subject to the development prohibition and conditions provided in RCW 76.09.460.

(f) Landowners who have not stated an intent to convert the land covered by an application or notification and who decide to convert the land to a nonforestry use within six years of receiving an approved application or notification must do so in a manner consistent with RCW 76.09.470.

(g) The application or notification must include a statement requiring an acknowledgment by the forest landowner of his or her intent with respect to conversion and acknowledging that he or she is familiar with the effects of this subsection.

(4) Whenever an approved application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department two days before the commencement of actual operations.

(5) Before the operator commences any forest practice in a manner or to an extent significantly different from that described in a previously approved application or notification, there shall be submitted to the department a new application or notification form in the manner set forth in this section.

(6)(a) Except as provided in RCW 76.09.350(4), the notification to or the approval given by the department to an application to conduct a forest practice shall be effective for a term of ~~((two))~~ three years from the date of approval or notification ~~((and shall not be renewed unless a new application is filed and approved or a new notification has been filed))~~.

(b) A notification or application may be renewed for an additional three-year term by the filing and approval of a notification or application, as applicable, prior to the expiration of the original application or notification. A renewal application or notification is subject to the forest practices rules in effect at the time

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the renewal application or notification is filed. Nothing in this section precludes the applicant from applying for a new application or notification after the renewal period has lapsed.

(c) At the option of the applicant, an application or notification may be submitted to cover a single forest practice or a number of forest practices within reasonable geographic or political boundaries as specified by the department. An application or notification that covers more than one forest practice may have an effective term of more than ~~((two))~~ three years.

(d) The board shall adopt rules that establish standards and procedures for approving an application or notification that has an effective term of more than ~~((two))~~ three years. Such rules shall include extended time periods for application or notification approval or disapproval. ~~((On an approved application with a term of more than two years, the applicant shall inform the department before commencing operations))~~ The department may require the applicant to provide advance notice before commencing operations on an approved application or notification.

(7) Notwithstanding any other provision of this section, no prior application or notification shall be required for any emergency forest practice necessitated by fire, flood, windstorm, earthquake, or other emergency as defined by the board, but the operator shall submit an application or notification, whichever is applicable, to the department within forty-eight hours after commencement of such practice or as required by local regulations.

(8) Forest practices applications or notifications are not required for forest practices conducted to control exotic forest insect or disease outbreaks, when conducted by or under the direction of the department of agriculture in carrying out an order of the governor or director of the department of agriculture to implement pest control measures as authorized under chapter 17.24 RCW, and are not required when conducted by or under the direction of the department in carrying out emergency measures under a forest health emergency declaration by the commissioner of public lands as provided in RCW 76.06.130.

(a) For the purposes of this subsection, exotic forest insect or disease has the same meaning as defined in RCW 76.06.020.

(b) In order to minimize adverse impacts to public resources, control measures must be based on integrated pest management, as defined in RCW 17.15.010, and must follow forest practices rules relating to road construction and maintenance, timber harvest, and forest chemicals, to the extent possible without compromising control objectives.

(c) Agencies conducting or directing control efforts must provide advance notice to the appropriate regulatory staff of the department of the operations that would be subject to exemption from forest practices application or notification requirements.

(d) When the appropriate regulatory staff of the department are notified under (c) of this subsection, they must consult with the landowner, interested agencies, and affected tribes, and assist the notifying agencies in the development of integrated pest management plans that comply with forest practices rules as required under (b) of this subsection.

(e) Nothing under this subsection relieves agencies conducting or directing control efforts from requirements of the federal clean water act as administered by the department of ecology under RCW 90.48.260.

(f) Forest lands where trees have been cut as part of an exotic forest insect or disease control effort under this subsection are subject to reforestation requirements under RCW 76.09.070.

(g) The exemption from obtaining approved forest practices applications or notifications does not apply to forest practices conducted after the governor, the director of the department of agriculture, or the commissioner of public lands have declared that an emergency no longer exists because control objectives have been

met, that there is no longer an imminent threat, or that there is no longer a good likelihood of control.

**Sec. 207.** RCW 76.09.150 and 2000 c 11 s 7 are each amended to read as follows:

(1) The department shall make inspections of forest lands, before, during, and after the conducting of forest practices as necessary for the purpose of ensuring compliance with this chapter ~~((and)),~~ the forest practices rules, including forest practices rules incorporated under RCW 76.09.040(3), and to ensure that no material damage occurs to the natural resources of this state as a result of ~~((such))~~ forest practices.

(2) Any duly authorized representative of the department shall have the right to enter upon forest land at any reasonable time to enforce the provisions of this chapter and the forest practices rules.

(3) The department or the department of ecology may apply for an administrative inspection warrant to either Thurston county superior court, or the superior court in the county in which the property is located. An administrative inspection warrant may be issued where:

(a) The department has attempted an inspection of forest lands under this chapter to ensure compliance with this chapter and the forest practices rules or to ensure that no potential or actual material damage occurs to the natural resources of this state, and access to all or part of the forest lands has been actually or constructively denied; or

(b) The department has reasonable cause to believe that a violation of this chapter or of rules adopted under this chapter is occurring or has occurred.

(4) In connection with any watershed analysis, any review of a pending application by an identification team appointed by the department, any compliance studies, any effectiveness monitoring, or other research that has been agreed to by a landowner, the department may invite representatives of other agencies, tribes, and interest groups to accompany a department representative and, at the landowner's election, the landowner, on any such inspections. Reasonable efforts shall be made by the department to notify the landowner of the persons being invited onto the property and the purposes for which they are being invited.

NEW SECTION. **Sec. 208.** A new section is added to chapter 43.30 RCW to read as follows:

(1) By December 31, 2013, the department must make examples of complete, high quality forest practices applications and the resulting approvals readily available to the public on its internet site, as well as the internet site of the office of regulatory assistance established in RCW 43.42.010. The department must maximize assistance to the public and interested parties by seeking to make readily available examples from forest practices that generate significant permitting activity or frequent questions.

(2) The department must regularly review and update the examples required to be made available on the internet under subsection (1) of this section.

(3) The department must obtain the written permission of an applicant before making publicly available that applicant's application or approval under this section and must work cooperatively with the applicant to ensure that no personal or proprietary information is made available.

**Sec. 209.** RCW 76.09.065 and 2000 c 11 s 5 are each amended to read as follows:

(1) ~~((Effective July 1, 1997,))~~ An applicant shall pay an application fee ~~((and a recording fee)),~~ if applicable, at the time an application or notification is submitted to the department or to the local governmental entity as provided in this chapter.

(2) ~~((For applications and notifications submitted to the department, the application fee))~~ (a) If sections 201 through 203 and 206 of this act are not enacted into law by June 30, 2012, then the fee

for applications and notifications submitted to the department shall be fifty dollars for class II, III, and IV forest practices applications or notifications relating to the commercial harvest of timber. However, the fee shall be five hundred dollars for class IV forest practices applications on lands being converted to other uses or on lands which are not to be reforested because of the likelihood of future conversion to urban development or on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except the fee shall be fifty dollars on those lands where the forest landowner provides:

~~((#))~~ (i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or

~~((#))~~ (ii) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the forest practices application.

(b)(i) If sections 201 through 203 and 206 of this act are enacted into law by June 30, 2012, then:

(A) The fee for applications and notifications relating to the commercial harvest of timber submitted to the department shall be one hundred dollars for class II applications and notifications, class III applications, and class IV forest practices that have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW, when the application or notification is submitted by a landowner who satisfies the definition of small forest landowner provided in RCW 76.09.450 and the application or notification applies to a single contiguous ownership consisting of one or more parcels;

(B) The fee for applications and notifications relating to the commercial harvest of timber submitted to the department shall be one hundred fifty dollars for class II applications and notifications, class III applications, and class IV forest practices that have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW, when the application or notification is submitted by a landowner who does not satisfy the criteria for a reduced application fee as provided in (b)(i)(A) of this subsection (2); and

(C) The fee shall be one thousand five hundred dollars for class IV forest practices applications on lands being converted to other uses or on lands that are not to be reforested because of the likelihood of future conversion to urban development or on lands that are contained within urban growth areas, designated pursuant to chapter 36.70A RCW, except the fee shall be the same as for a class III forest practices application where the forest landowner provides:

(I) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or

(II) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the forest practices application.

(ii) If the board has not incorporated fish protection standards adopted under chapter 77.55 RCW into the forest practices rules and approved technical guidance as required under RCW 76.09.040 by December 31, 2013, the fee for applications and notifications submitted to the department shall be as provided under (a) of this subsection until the rules are adopted and technical guidance

approved.

(3) The forest practices application account is created in the state treasury. Moneys in the account may be spent only after appropriation. All money collected from fees under ~~((this))~~ subsection (2) of this section shall be deposited in the ~~((state general fund))~~ forest practices application account for the purposes of implementing this chapter, chapter 76.13 RCW, and Title 222 WAC.

~~((3))~~ (4) For applications submitted to ~~((the))~~ a local governmental entity as provided in this chapter, the fee shall be ~~((five hundred dollars for class IV forest practices on lands being converted to other uses or lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except as otherwise provided in this section, unless a different fee is otherwise provided))~~ determined, collected, and retained by the local governmental entity.

~~((4))~~ Recording fees shall be as provided in chapter 36.18 RCW.

(5) An application fee under subsection (2) of this section shall be refunded or credited to the applicant if either the application or notification is disapproved by the department or the application or notification is withdrawn by the applicant due to restrictions imposed by the department.)

**Sec. 210.** RCW 76.09.470 and 2007 c 106 s 3 are each amended to read as follows:

(1) If a landowner who did not state an intent to convert his or her land to a nonforestry use decides to convert his or her land to a nonforestry use within six years of receiving an approved forest practices application or notification under this chapter, the landowner must:

(a) Stop all forest practices activities on the parcels subject to the proposed land use conversion to a nonforestry use;

(b) Contact the department of ecology and the applicable county, city, town, or regional governmental entity to begin the permitting process; and

(c) Notify the department ~~((and))~~, withdraw any applicable applications or notifications ~~((or request))~~, and submit a new application for the conversion. The fee for a new application for conversion under this subsection (1)(c) is the difference between the applicable fee for the new application under RCW 76.09.065 and the fee previously paid for the original application or notification, which must be deposited in the forest practices application account created in RCW 76.09.065.

(2) Upon being contacted by a landowner under this section, the county, city, town, or regional governmental entity must:

(a) Notify the department and request from the department the status of any applicable forest practices applications, notifications, or final orders or decisions; and

(b) Complete the following activities:

(i) Require that the landowner be in full compliance with chapter 43.21C RCW, if applicable;

(ii) Receive notification from the department that the landowner has resolved any outstanding final orders or decisions issued by the department; and

(iii) Make a determination as to whether or not the condition of the land in question is in full compliance with local ordinances and regulations. If full compliance is not found, a mitigation plan to address violations of local ordinances or regulations must be required for the parcel in question by the county, city, town, or regional governmental entity. Required mitigation plans must be prepared by the landowner and approved by the county, city, town, or regional governmental entity. Once approved, the mitigation plan must be implemented by the landowner. Mitigation measures that may be required include, but are not limited to, revegetation requirements to plant and maintain trees of sufficient maturity and appropriate species composition to restore critical area and buffer

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function or to be in compliance with applicable local government regulations.

**Sec. 211.** RCW 76.09.030 and 2008 c 46 s 1 are each amended to read as follows:

(1) There is hereby created the forest practices board of the state of Washington as an agency of state government consisting of members as follows:

(a) The commissioner of public lands or the commissioner's designee;

(b) The director of the department of ~~(community, trade, and economic development)~~ commerce or the director's designee;

(c) The director of the department of agriculture or the director's designee;

(d) The director of the department of ecology or the director's designee;

(e) The director of the department of fish and wildlife or the director's designee;

(f) An elected member of a county legislative authority appointed by the governor ~~(:—PROVIDED, That such)~~. However, the county member's service on the board shall be conditioned on the member's continued service as an elected county official;

(g) One member representing a timber products union, appointed by the governor from a list of three names submitted by a timber labor coalition affiliated with a statewide labor organization that represents a majority of the timber product unions in the state; and

(h) Six members of the general public appointed by the governor, one of whom shall be a small forest landowner who actively manages his or her land, and one of whom shall be an independent logging contractor.

(2) ~~(The~~ director of the department of fish and wildlife's service on the board may be terminated two years after August 18, 1999, if the legislature finds that after two years the department has not made substantial progress toward integrating the laws, rules, and programs governing forest practices, chapter 76.09 RCW, and the laws, rules, and programs governing hydraulic projects, chapter 77.55 RCW. Such a finding shall be based solely on whether the department of fish and wildlife makes substantial progress as defined in this subsection, and will not be based on other actions taken as a member of the board. Substantial progress shall include recommendations to the legislature for closer integration of the existing rule-making authorities of the board and the department of fish and wildlife, and closer integration of the forest practices and hydraulics permitting processes, including exploring the potential for a consolidated permitting process. These recommendations shall be designed to resolve problems currently associated with the existing dual regulatory and permitting processes.

(3)) The members of the initial board appointed by the governor shall be appointed so that the term of one member shall expire December 31, 1975, the term of one member shall expire December 31, 1976, the term of one member shall expire December 31, 1977, the terms of two members shall expire December 31, 1978, and the terms of two members shall expire December 31, 1979. Thereafter, each member shall be appointed for a term of four years. Vacancies on the board shall be filled in the same manner as the original appointments. Each member of the board shall continue in office until his or her successor is appointed and qualified. The commissioner of public lands or the commissioner's designee shall be the chair of the board.

~~((4))~~ (3) The board shall meet at such times and places as shall be designated by the chair or upon the written request of the majority of the board. The principal office of the board shall be at the state capital.

~~((5))~~ (4) Members of the board, except public employees and elected officials, shall be compensated in accordance with RCW 43.03.250. Each member shall be entitled to reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060.

~~((6))~~ (5) The board may employ such clerical help and staff pursuant to chapter 41.06 RCW as is necessary to carry out its duties.

**Sec. 212.** RCW 76.09.020 and 2010 c 210 s 19 and 2010 c 188 s 6 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adaptive management" means reliance on scientific methods to test the results of actions taken so that the management and related policy can be changed promptly and appropriately.

(2) "Appeals board" means the pollution control hearings board created by RCW 43.21B.010.

(3) "Application" means the application required pursuant to RCW 76.09.050.

(4) "Aquatic resources" includes water quality, salmon, other species of the vertebrate classes Cephalaspidomorphi and Osteichthyes identified in the forests and fish report, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and their respective habitats.

(5) "Board" means the forest practices board created in RCW 76.09.030.

(6) "Commissioner" means the commissioner of public lands.

(7) "Contiguous" means land adjoining or touching by common corner or otherwise. Land having common ownership divided by a road or other right-of-way shall be considered contiguous.

(8) "Conversion to a use other than commercial timber operation" means a bona fide conversion to an active use which is incompatible with timber growing and as may be defined by forest practices rules.

(9) "Date of receipt" has the same meaning as defined in RCW 43.21B.001.

(10) "Department" means the department of natural resources.

(11) "Ecosystem services" means the benefits that the public enjoys as a result of natural processes and biological diversity.

(12) "Ecosystem services market" means a system in which providers of ecosystem services can access financing or market capital to protect, restore, and maintain ecological values, including the full spectrum of regulatory, quasiregulatory, and voluntary markets.

(13) "Fish passage barrier" means any artificial instream structure that impedes the free passage of fish.

(14) "Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. As it applies to the operation of the road maintenance and abandonment plan element of the forest practices rules on small forest landowners, the term "forest land" excludes:

(a) Residential home sites, which may include up to five acres; and

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production,

preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

(15) "Forest landowner" means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner. However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

(16) "Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

(a) Road and trail construction, including forest practices hydraulic projects that include water crossing structures, and associated activities and maintenance;

(b) Harvesting, final and intermediate;

(c) Precommercial thinning;

(d) Reforestation;

(e) Fertilization;

(f) Prevention and suppression of diseases and insects;

(g) Salvage of trees; and

(h) Brush control.

"Forest practice" shall not include preparatory work such as tree marking, surveying and road flagging, and removal or harvesting of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber, or public resources.

(17) "Forest practices rules" means any rules adopted pursuant to RCW 76.09.040.

(18) "Forest road," as it applies to the operation of the road maintenance and abandonment plan element of the forest practices rules on small forest landowners, means a road or road segment that crosses land that meets the definition of forest land, but excludes residential access roads.

(19) "Forest trees" does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than fifteen years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees, but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

(20) "Forests and fish report" means the forests and fish report to the board dated April 29, 1999.

(21) "Operator" means any person engaging in forest practices except an employee with wages as his or her sole compensation.

(22) "Person" means any individual, partnership, private, public, or municipal corporation, county, the department or other state or local governmental entity, or association of individuals of whatever nature.

(23) "Public resources" means water, fish and wildlife, and in addition shall mean capital improvements of the state or its political subdivisions.

(24) "Small forest landowner" has the same meaning as defined in RCW 76.09.450.

(25) "Timber" means forest trees, standing or down, of a commercial species, including Christmas trees. However, "timber" does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

(26) "Timber owner" means any person having all or any part of the legal interest in timber. Where such timber is subject to a contract of sale, "timber owner" shall mean the contract purchaser.

(27) "Unconfined channel migration zone" means the area within which the active channel of an unconfined stream is prone to move and where the movement would result in a potential near-term loss of riparian forest adjacent to the stream. Sizeable islands with productive timber may exist within the zone.

(28) "Unconfined stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex floodplain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement.

(29) "Forest practices hydraulic project" means a hydraulic project, as defined under RCW 77.55.011, that requires a forest practices application or notification under this chapter.

(30) "Fill" means the placement of earth material or aggregate for road or landing construction or other similar activities.

**NEW SECTION. Sec. 213.** A new section is added to chapter 43.21C RCW to read as follows:

The incorporation of fish protection standards adopted under chapter 77.55 RCW into the forest practices rules as required under RCW 76.09.040(3) is exempt from compliance with this chapter.

**NEW SECTION. Sec. 214.** (1) The departments of natural resources and fish and wildlife must jointly provide a report to the appropriate committees of the legislature containing findings and any recommendations relating to the regulatory integration of hydraulic projects and forest practices as provided in this act, including:

(a) Progress made in implementing the integration required under this act, including rule incorporation and development of forest practices board manual guidance;

(b) An update on and potential for permitting efficiencies in addition to the integration required under this act;

(c) The process for and outcomes from review of forest practices applications that include forest practices hydraulic projects by the department of fish and wildlife; and

(d) Compliance monitoring for forest practices hydraulic projects through the review processes provided under WAC 222-08-160 as it existed on the effective date of this section.

(2) The departments of natural resources and fish and wildlife must provide an initial report by September 1, 2014, and a second report by September 1, 2016.

(3) This section expires December 31, 2016.

**NEW SECTION. Sec. 215.** Sections 202 and 205 of this act take effect on the date the forest practices board incorporates fish protection standards adopted under chapter 77.55 RCW into the forest practices rules and approves technical guidance as required under RCW 76.09.040. The department of natural resources must provide written notice of the effective date of these sections to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department of natural resources.

**NEW SECTION. Sec. 216.** Nothing in this act affects any rules, processes, or procedures of the department of fish and wildlife and the department of natural resources existing on the effective date of this section that provide for regulatory integration of hydraulic projects and forest practices for projects in nonfish-bearing waters.

**NEW SECTION. Sec. 217.** Nothing in this act authorizes the department of fish and wildlife to assume authority over approval, disapproval, conditioning, or enforcement of applications or notifications submitted under chapter 76.09 RCW.

**NEW SECTION. Sec. 218.** Nothing in this act affects the jurisdiction or other authority of a federally recognized Indian tribe within the boundary of its reservation or on other tribally owned lands.

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**NEW SECTION. Sec. 219.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**PART THREE**

**State Environmental Policy Act and Local Development Regulations**

**NEW SECTION. Sec. 301.** (1) The legislature recognizes that the rule-based categorical exemption thresholds to chapter 43.21C RCW, found in WAC 197-11-800, have not been updated in recent years, and should be reviewed in light of the increased environmental protections in place under chapters 36.70A and 90.58 RCW, and other laws. It is the intent of the legislature to direct the department of ecology to conduct two phases of rulemaking over the next two years to increase the thresholds for these categorical exemptions.

(2) By December 31, 2012, the department of ecology shall increase the rule-based categorical exemptions to chapter 43.21C RCW found in WAC 197-11-800 and update the environmental checklist found in WAC 197- 11-960. In updating the categorical exemptions, the department of ecology must:

(a) At a minimum, increase the existing maximum threshold levels for the following project types:

(i) The construction or location of single-family residential developments;

(ii) The construction or location of multifamily residential developments;

(iii) The construction of an agricultural structure, other than a feed lot, that is similar to the following: A barn, a loafing shed, a farm equipment storage building, or a produce storing or packing structure;

(iv) The construction of the following, including any associated parking areas or facilities: An office, a school, a commercial building, a recreational building, a service building, or a storage building;

(v) Landfilling or excavation activities; and

(vi) The installation of an electric facility, lines, equipment, or appurtenances, other than substations.

(b) Establish maximum exemption levels for action types that differ based on whether the project is proposed to occur in:

(i) An incorporated city;

(ii) An unincorporated area within an urban growth area;

(iii) An unincorporated area outside of an urban growth area but within a county planning under chapter 36.70A RCW; or

(iv) An unincorporated area within a county not planning under chapter 36.70A RCW.

(c) In updating the environmental checklist found in WAC 197-11- 960, the department of ecology shall:

(i) Improve efficiency of the environmental checklist; and

(ii) Not include any new subjects into the scope of the checklist, including climate change and greenhouse gases.

(d) Until the completion of the rule making required under this section, a city or county may apply the highest categorical exemption levels authorized under WAC 197-11-800 to any action, regardless if the city or county with jurisdiction has exercised its authority to raise the exemption levels above the established minimums, unless the city or county with jurisdiction passes an ordinance or resolution that lowers the exemption levels to a level below the allowed maximum but not less than the default minimum levels detailed in WAC 197-11-800.

(3)(a) By December 31, 2013, the department of ecology shall:

(i) Update, but not decrease, the thresholds for all other project actions not specified in subsection (2) of this section;

(ii) Propose methods for integrating the state environmental policy act process with provisions of the growth management act, chapter 36.70A RCW, including consideration of ways to revise WAC 197-11-210 through 197-11-232 to further the goals of RCW 43.21C.240; and

(iii) Create categorical exemptions for minor code amendments for which review under chapter 43.21C RCW would not be required because they do not lessen environmental protection.

(b) During this process, the department of ecology may also review and update the thresholds resulting from the 2012 rule-making process outlined in subsection (2) of this section.

(4)(a) The department of ecology shall convene an advisory committee consisting of members representing, at minimum, cities, counties, business interests, environmental interests, agricultural interests, cultural resources interests, state agencies, and tribal governments to:

(i) Assist in updating the environmental checklist and updating the thresholds for other project actions for both rule-making processes under subsections (2) and (3) of this section;

(ii) Ensure that state agencies and other interested parties can receive notice about projects of interest through notice under chapter 43.21C RCW and means other than chapter 43.21C RCW; and

(iii) Ensure that federally recognized tribes receive notice about projects that impact tribal interests through notice under chapter 43.21C RCW and means other than chapter 43.21C RCW.

(b) Advisory committee members must have direct experience with the implementation or application of the state environmental policy act.

(5) This section expires July 31, 2014.

**Sec. 302.** RCW 43.21C.031 and 1995 c 347 s 203 are each amended to read as follows:

(1) An environmental impact statement (the detailed statement required by RCW 43.21C.030(2)(c)) shall be prepared on proposals for legislation and other major actions having a probable significant, adverse environmental impact. The environmental impact statement may be combined with the recommendation or report on the proposal or issued as a separate document. The substantive decisions or recommendations shall be clearly identifiable in the combined document. Actions categorically exempt under RCW 43.21C.110(1)(a) and section 308 of this act do not require environmental review or the preparation of an environmental impact statement under this chapter. ~~((In a county, city, or town planning under RCW 36.70A.040, a planned action, as provided for in subsection (2) of this section, does not require a threshold determination or the preparation of an environmental impact statement under this chapter, but is subject to environmental review and mitigation as provided in this chapter.))~~

(2) An environmental impact statement is required to analyze only those probable adverse environmental impacts which are significant. Beneficial environmental impacts may be discussed. The responsible official shall consult with agencies and the public to identify such impacts and limit the scope of an environmental impact statement. The subjects listed in RCW 43.21C.030(2)(c) need not be treated as separate sections of an environmental impact statement. Discussions of significant short-term and long-term environmental impacts, significant irrevocable commitments of natural resources, significant alternatives including mitigation measures, and significant environmental impacts which cannot be mitigated should be consolidated or included, as applicable, in those sections of an environmental impact statement where the responsible official decides they logically belong.

((2)(a) For purposes of this section, a planned action means one or more types of project action that:

(i) Are designated planned actions by an ordinance or resolution adopted by a county, city, or town planning under RCW

36.70A.040;

(ii) Have had the significant impacts adequately addressed in an environmental impact statement prepared in conjunction with (A) a comprehensive plan or subarea plan adopted under chapter 36.70A RCW, or (B) a fully contained community, a master planned resort, a master planned development, or a phased project;

(iii) Are subsequent or implementing projects for the proposals listed in (a)(ii) of this subsection;

(iv) Are located within an urban growth area, as defined in RCW 36.70A.030;

(v) Are not essential public facilities, as defined in RCW 36.70A.200; and

(vi) Are consistent with a comprehensive plan adopted under chapter 36.70A RCW.

(b) A county, city, or town shall limit planned actions to certain types of development or to specific geographical areas that are less extensive than the jurisdictional boundaries of the county, city, or town and may limit a planned action to a time period identified in the environmental impact statement or the ordinance or resolution adopted under this subsection.)

**NEW SECTION. Sec. 303.** A new section is added to chapter 43.21C RCW to read as follows:

(1) For purposes of this chapter, a planned action means one or more types of development or redevelopment that meet the following criteria:

(a) Are designated as planned actions by an ordinance or resolution adopted by a county, city, or town planning under RCW 36.70A.040;

(b) Have had the significant impacts adequately addressed in an environmental impact statement under the requirements of this chapter in conjunction with, or to implement, a comprehensive plan or subarea plan adopted under chapter 36.70A RCW, or a fully contained community, a master planned resort, a master planned development, or a phased project;

(c) Have had project level significant impacts adequately addressed in an environmental impact statement unless the impacts are specifically deferred for consideration at the project level pursuant to subsection (3)(b) of this section;

(d) Are subsequent or implementing projects for the proposals listed in (b) of this subsection;

(e) Are located within an urban growth area designated pursuant to RCW 36.70A.110;

(f) Are not essential public facilities, as defined in RCW 36.70A.200, unless an essential public facility is accessory to or part of a residential, office, school, commercial, recreational, service, or industrial development that is designated a planned action under this subsection; and

(g) Are consistent with a comprehensive plan or subarea plan adopted under chapter 36.70A RCW.

(2) A county, city, or town shall define the types of development included in the planned action and may limit a planned action to:

(a) A specific geographic area that is less extensive than the jurisdictional boundaries of the county, city, or town; or

(b) A time period identified in the ordinance or resolution adopted under this subsection.

(3)(a) A county, city, or town shall determine during permit review whether a proposed project is consistent with a planned action ordinance adopted by the jurisdiction. To determine project consistency with a planned action ordinance, a county, city, or town may utilize a modified checklist pursuant to the rules adopted to implement RCW 43.21C.110, a form that is designated within the planned action ordinance, or a form contained in agency rules adopted pursuant to RCW 43.21C.120.

(b) A county, city, or town is not required to make a threshold determination and may not require additional environmental review,

for a proposal that is determined to be consistent with the development or redevelopment described in the planned action ordinance, except for impacts that are specifically deferred to the project level at the time of the planned action ordinance's adoption. At least one community meeting must be held before the notice is issued for the planned action ordinance. Notice for the planned action and notice of the community meeting required by this subsection (3)(b) must be mailed or otherwise verifiably provided to: (i) All affected federally recognized tribal governments; and (ii) agencies with jurisdiction over the future development anticipated for the planned action. The determination of consistency, and the adequacy of any environmental review that was specifically deferred, are subject to the type of administrative appeal that the county, city, or town provides for the proposal itself consistent with RCW 36.70B.060.

(4) For a planned action ordinance that encompasses the entire jurisdictional boundary of a county, city, or town, at least one community meeting must be held before the notice is issued for the planned action ordinance. Notice for the planned action ordinance and notice of the community meeting required by this subsection must be mailed or otherwise verifiably provided to:

(a) All property owners of record within the county, city, or town;

(b) All affected federally recognized tribal governments; and

(c) All agencies with jurisdiction over the future development anticipated for the planned action.

**Sec. 304.** RCW 43.21C.229 and 2003 c 298 s 1 are each amended to read as follows:

(1) In order to accommodate infill development and thereby realize the goals and policies of comprehensive plans adopted according to chapter 36.70A RCW, a city or county planning under RCW 36.70A.040 is authorized by this section to establish categorical exemptions from the requirements of this chapter. An exemption adopted under this section applies even if it differs from the categorical exemptions adopted by rule of the department under RCW 43.21C.110(1)(a). An exemption may be adopted by a city or county under this section if it meets the following criteria:

(a) It categorically exempts government action related to development ~~((that is new residential or mixed use development))~~ proposed to fill in an urban growth area, designated according to RCW 36.70A.110, where current density and intensity of use in the area is lower than called for in the goals and policies of the applicable comprehensive plan and the development is either:

(i) Residential development;

(ii) Mixed-use development; or

(iii) Commercial development up to sixty-five thousand square feet, excluding retail development;

(b) It does not exempt government action related to development that is inconsistent with the applicable comprehensive plan or would exceed the density or intensity of use called for in the goals and policies of the applicable comprehensive plan; ~~((and))~~

(c) The local government considers the specific probable adverse environmental impacts of the proposed action and determines that these specific impacts are adequately addressed by the development regulations or other applicable requirements of the comprehensive plan, subarea plan element of the comprehensive plan, planned action ordinance, or other local, state, or federal rules or laws; and

(d)(i) The city or county's applicable comprehensive plan was previously subjected to environmental analysis through an environmental impact statement under the requirements of this chapter prior to adoption; or

(ii) The city or county has prepared an environmental impact statement that considers the proposed use or density and intensity of use in the area proposed for an exemption under this section.

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(2) Any categorical exemption adopted by a city or county under this section shall be subject to the rules of the department adopted according to RCW 43.21C.110(1)(a) that provide exceptions to the use of categorical exemptions adopted by the department.

**NEW SECTION. Sec. 305.** A new section is added to chapter 43.21C RCW to read as follows:

(1) A county, city, or town may recover its reasonable expenses of preparation of a nonproject environmental impact statement prepared under RCW 43.21C.229 and section 303 of this act:

(a) Through access to financial assistance under RCW 36.70A.490;

(b) With funding from private sources; and

(c) By the assessment of fees consistent with the requirements and limitations of this section.

(2)(a) A county, city, or town is authorized to assess a fee upon subsequent development that will make use of and benefit from: (i) The analysis in an environmental impact statement prepared for the purpose of compliance with section 303 of this act regarding planned actions; or (ii) the reduction in environmental analysis requirements resulting from the exercise of authority under RCW 43.21C.229 regarding infill development.

(b) The amount of the fee must be reasonable and proportionate to the total expenses incurred by the county, city, or town in the preparation of the environmental impact statement.

(3) A county, city, or town assessing fees under subsection (2)(a) of this section must provide for a mechanism by which project proponents may either elect to utilize the environmental review completed by the lead agency and pay the fees under subsection (1) of this section or certify that they do not want the local jurisdiction to utilize the environmental review completed as a part of a planned action and therefore not be assessed any associated fees. Project proponents who choose this option may not make use of or benefit from the up-front environmental review prepared by the local jurisdiction.

(4) Prior to the collection of fees, the county, city, or town must enact an ordinance that establishes the total amount of expenses to be recovered through fees and provides objective standards for determining the fee amount to be imposed upon each development proposal proportionate to the impacts of each development and to the benefits accruing to each development from the nonproject environmental review. The ordinance must provide (a) a procedure by which an applicant who disagrees with whether the amount of the fee is correct, reasonable, or proportionate may pay the fee with the written stipulation "paid under protest"; and (b) if the county, city, or town provides for an administrative appeal of its decision on the project for which the fees are imposed, any dispute about the amount of the fees must be resolved in the same administrative appeals process. Any disagreement about the reasonableness, proportionality, or amount of the fees imposed upon a development may not be the basis for delay in issuance of a project permit for that development.

(5) The ordinance adopted under subsection (4) of this section must make information available about the amount of the expenses designated for recovery. When such expenses have been fully recovered, the county, city, or town may no longer assess a fee under this section.

(6) Any fees collected under this section from subsequent development may be used to reimburse funding received from private sources to conduct the environmental review.

(7) The city, county, or town shall refund fees collected where a court of competent jurisdiction determines that the environmental review conducted under section 303 of this act, regarding planned actions, or under RCW 43.21C.229, regarding infill development, was not sufficient to comply with the requirements of this chapter

regarding the proposed development activity for which the fees were collected. The applicant and the city, county, or town may mutually agree to a partial refund or to waive the refund in the interest of resolving any dispute regarding compliance with this chapter.

**Sec. 306.** RCW 43.21C.037 and 2011 c 207 s 3 are each amended to read as follows:

(1) Decisions pertaining to applications for Class I, II, and III forest practices, as defined by rule of the forest practices board under RCW 76.09.050, are not subject to the requirements of RCW 43.21C.030(2)(c) ~~((as now or hereafter amended))~~.

(2) When the applicable county, city, or town requires a license in connection with any proposal involving forest practices:

(a) On forest lands that are being converted to another use; or

(b) On lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, then the local government, rather than the department of natural resources, is responsible for any detailed statement required under RCW 43.21C.030(2)(c).

(3)(a) Those forest practices determined by rule of the forest practices board to have a potential for a substantial impact on the environment, and thus to be Class IV practices, require an evaluation by the department of natural resources as to whether or not a detailed statement must be prepared pursuant to this chapter.

(b) The evaluation ~~((shall))~~ required by this section must be made within ten days from the date the department receives the application unless the application is subject to concurrence review by the department of fish and wildlife under section 202 of this act. Evaluations for applications that are subject to concurrence review by the department of fish and wildlife under section 202 of this act must be made within ten days from the date the department of fish and wildlife completes the concurrent review.

(c) A Class IV forest practice application must be approved or disapproved by the department ~~((within thirty calendar days from the date the department receives the application, unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period))~~ according to the timelines established in RCW 76.09.050.

(d) This section shall not be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action regarding a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted.

**Sec. 307.** RCW 82.02.020 and 2010 c 153 s 3 are each amended to read as follows:

Except only as expressly provided in chapters 67.28, 81.104, and 82.14 RCW, the state preempts the field of imposing retail sales and use taxes and taxes upon parimutuel wagering authorized pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county, town, or other municipal subdivision shall have the right to impose taxes of that nature. Except as provided in RCW 64.34.440 and 82.02.050 through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. However, this section does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal corporation can demonstrate

are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat. A local government shall not use such voluntary agreements for local off-site transportation improvements within the geographic boundaries of the area or areas covered by an adopted transportation program authorized by chapter 39.92 RCW. Any such voluntary agreement is subject to the following provisions:

(1) The payment shall be held in a reserve account and may only be expended to fund a capital improvement agreed upon by the parties to mitigate the identified, direct impact;

(2) The payment shall be expended in all cases within five years of collection; and

(3) Any payment not so expended shall be refunded with interest to be calculated from the original date the deposit was received by the county and at the same rate applied to tax refunds pursuant to RCW 84.69.100; however, if the payment is not expended within five years due to delay attributable to the developer, the payment shall be refunded without interest.

No county, city, town, or other municipal corporation shall require any payment as part of such a voluntary agreement which the county, city, town, or other municipal corporation cannot establish is reasonably necessary as a direct result of the proposed development or plat.

Nothing in this section prohibits cities, towns, counties, or other municipal corporations from collecting reasonable fees from an applicant for a permit or other governmental approval to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW, including reasonable fees that are consistent with RCW 43.21C.420(6) and section 305 of this act.

This section does not limit the existing authority of any county, city, town, or other municipal corporation to impose special assessments on property specifically benefited thereby in the manner prescribed by law.

Nothing in this section prohibits counties, cities, or towns from imposing or permits counties, cities, or towns to impose water, sewer, natural gas, drainage utility, and drainage system charges. However, no such charge shall exceed the proportionate share of such utility or system's capital costs which the county, city, or town can demonstrate are attributable to the property being charged. Furthermore, these provisions may not be interpreted to expand or contract any existing authority of counties, cities, or towns to impose such charges.

Nothing in this section prohibits a transportation benefit district from imposing fees or charges authorized in RCW 36.73.120 nor prohibits the legislative authority of a county, city, or town from approving the imposition of such fees within a transportation benefit district.

Nothing in this section prohibits counties, cities, or towns from imposing transportation impact fees authorized pursuant to chapter 39.92 RCW.

Nothing in this section prohibits counties, cities, or towns from requiring property owners to provide relocation assistance to tenants under RCW 59.18.440 and 59.18.450.

Nothing in this section limits the authority of counties, cities, or towns to implement programs consistent with RCW 36.70A.540, nor to enforce agreements made pursuant to such programs.

This section does not apply to special purpose districts formed and acting pursuant to Title 54, 57, or 87 RCW, nor is the authority conferred by these titles affected.

**NEW SECTION. Sec. 308.** A new section is added to chapter 43.21C RCW to read as follows:

The following nonproject actions are categorically exempt from the requirements of this chapter:

(1) Amendments to development regulations that are required to ensure consistency with an adopted comprehensive plan pursuant to RCW 36.70A.040, where the comprehensive plan was previously subjected to environmental review pursuant to this chapter and the impacts associated with the proposed regulation were specifically addressed in the prior environmental review;

(2) Amendments to development regulations that are required to ensure consistency with a shoreline master program approved pursuant to RCW 90.58.090, where the shoreline master program was previously subjected to environmental review pursuant to this chapter and the impacts associated with the proposed regulation were specifically addressed in the prior environmental review;

(3) Amendments to development regulations that, upon implementation of a project action, will provide increased environmental protection, limited to the following:

(a) Increased protections for critical areas, such as enhanced buffers or setbacks;

(b) Increased vegetation retention or decreased impervious surface areas in shoreline jurisdiction; and

(c) Increased vegetation retention or decreased impervious surface areas in critical areas;

(4) Amendments to technical codes adopted by a county, city, or town to ensure consistency with minimum standards contained in state law, including the following:

(a) Building codes required by chapter 19.27 RCW;

(b) Energy codes required by chapter 19.27A RCW; and

(c) Electrical codes required by chapter 19.28 RCW.

**NEW SECTION. Sec. 309.** A new section is added to chapter 43.21C RCW to read as follows:

(1) The lead agency for an environmental review under this chapter utilizing an environmental checklist developed by the department of ecology pursuant to RCW 43.21C.110 may identify within the checklist provided to applicants instances where questions on the checklist are adequately covered by a locally adopted ordinance, development regulation, land use plan, or other legal authority.

(2) If a lead agency identifies an instance as described in subsection (1) of this section, it still must consider whether the action has an impact on the particular element or elements of the environment in question.

(3) In instances where the locally adopted ordinance, development regulation, land use plan, or other legal authority provide the necessary information to answer a specific question, the lead agency must explain how the proposed project satisfies the underlying local legal authority.

(4) If the lead agency identifies instances where questions on the checklist are adequately covered by a locally adopted ordinance, development regulation, land use plan, or other legal authority, an applicant may still provide answers to any questions on the checklist.

(5) Nothing in this section authorizes a lead agency to ignore or delete a question on the checklist.

(6) Nothing in this section changes the standard for whether an environmental impact statement is required for an action that may have a probable significant, adverse environmental impact pursuant to RCW 43.21C.030.

(7) Nothing in this section affects the appeal provisions provided in this chapter.

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(8) Nothing in this section modifies existing rules for determining the lead agency, as defined in WAC 197-11-922 through 197-11-948, nor does it modify agency procedures for complying with the state environmental policy act when an agency other than a local government is serving as the lead agency.

**Sec. 310.** RCW 36.70A.490 and 1995 c 347 s 115 are each amended to read as follows:

The growth management planning and environmental review fund is hereby established in the state treasury. Moneys may be placed in the fund from the proceeds of bond sales, tax revenues, budget transfers, federal appropriations, gifts, or any other lawful source. Moneys in the fund may be spent only after appropriation. Moneys in the fund shall be used to make grants or loans to local governments for the purposes set forth in RCW 43.21C.240, 43.21C.031, or 36.70A.500. Any payment of either principal or interest, or both, derived from loans made from this fund must be deposited into the fund.

**Sec. 311.** RCW 36.70A.500 and 1997 c 429 s 28 are each amended to read as follows:

(1) The department of (~~community, trade, and economic development~~) commerce shall provide management services for the growth management planning and environmental review fund created by RCW 36.70A.490. The department shall establish procedures for fund management. The department shall encourage participation in the grant or loan program by other public agencies. The department shall develop the grant or loan criteria, monitor the grant or loan program, and select grant or loan recipients in consultation with state agencies participating in the grant or loan program through the provision of grant or loan funds or technical assistance.

(2) A grant or loan may be awarded to a county or city that is required to or has chosen to plan under RCW 36.70A.040 and that is qualified pursuant to this section. The grant or loan shall be provided to assist a county or city in paying for the cost of preparing an environmental analysis under chapter 43.21C RCW, that is integrated with a comprehensive plan, subarea plan, plan element, countywide planning policy, development regulation, monitoring program, or other planning activity adopted under or implementing this chapter that:

(a) Improves the process for project permit review while maintaining environmental quality; or

(b) Encourages use of plans and information developed for purposes of complying with this chapter to satisfy requirements of other state programs.

(3) In order to qualify for a grant or loan, a county or city shall:

(a) Demonstrate that it will prepare an environmental analysis pursuant to chapter 43.21C RCW and subsection (2) of this section that is integrated with a comprehensive plan, subarea plan, plan element, countywide planning policy, development regulations, monitoring program, or other planning activity adopted under or implementing this chapter;

(b) Address environmental impacts and consequences, alternatives, and mitigation measures in sufficient detail to allow the analysis to be adopted in whole or in part by applicants for development permits within the geographic area analyzed in the plan;

(c) Demonstrate that procedures for review of development permit applications will be based on the integrated plans and environmental analysis;

(d) Include mechanisms to monitor the consequences of growth as it occurs in the plan area and to use the resulting data to update the plan, policy, or implementing mechanisms and associated environmental analysis;

(e) Demonstrate substantial progress towards compliance with the requirements of this chapter. A county or city that is more than

six months out of compliance with a requirement of this chapter is deemed not to be making substantial progress towards compliance; and

(f) Provide local funding, which may include financial participation by the private sector.

(4) In awarding grants or loans, the department shall give preference to proposals that include one or more of the following elements:

(a) Financial participation by the private sector, or a public/private partnering approach;

(b) Identification and monitoring of system capacities for elements of the built environment, and to the extent appropriate, of the natural environment;

(c) Coordination with state, federal, and tribal governments in project review;

(d) Furtherance of important state objectives related to economic development, protection of areas of statewide significance, and siting of essential public facilities;

(e) Programs to improve the efficiency and effectiveness of the permitting process by greater reliance on integrated plans and prospective environmental analysis;

(f) Programs for effective citizen and neighborhood involvement that contribute to greater likelihood that planning decisions can be implemented with community support; (~~and~~)

(g) Programs to identify environmental impacts and establish mitigation measures that provide effective means to satisfy concurrency requirements and establish project consistency with the plans; or

(h) Environmental review that addresses the impacts of increased density or intensity of comprehensive plans, subarea plans, or receiving areas designated by a city or town under the regional transfer of development rights program in chapter 43.362 RCW.

(5) If the local funding includes funding provided by other state functional planning programs, including open space planning and watershed or basin planning, the functional plan shall be integrated into and be consistent with the comprehensive plan.

(6) State agencies shall work with grant or loan recipients to facilitate state and local project review processes that will implement the projects receiving grants or loans under this section.

**Sec. 312.** RCW 43.21C.110 and 1997 c 429 s 47 are each amended to read as follows:

It shall be the duty and function of the department of ecology:

(1) To adopt and amend (~~hereafter~~) rules of interpretation and implementation of this chapter, subject to the requirements of chapter 34.05 RCW, for the purpose of providing uniform rules and guidelines to all branches of government including state agencies, political subdivisions, public and municipal corporations, and counties. The proposed rules shall be subject to full public hearings requirements associated with rule (~~promulgation~~) adoption. Suggestions for modifications of the proposed rules shall be considered on their merits, and the department shall have the authority and responsibility for full and appropriate independent (~~promulgation and~~) adoption of rules, assuring consistency with this chapter as amended and with the preservation of protections afforded by this chapter. The rule-making powers authorized in this section shall include, but shall not be limited to, the following phases of interpretation and implementation of this chapter:

(a) Categories of governmental actions which are not to be considered as potential major actions significantly affecting the quality of the environment, including categories pertaining to applications for water right permits pursuant to chapters 90.03 and 90.44 RCW. The types of actions included as categorical exemptions in the rules shall be limited to those types which are not major actions significantly affecting the quality of the environment.

The rules shall provide for certain circumstances where actions which potentially are categorically exempt require environmental review. An action that is categorically exempt under the rules adopted by the department may not be conditioned or denied under this chapter.

(b) Rules for criteria and procedures applicable to the determination of when an act of a branch of government is a major action significantly affecting the quality of the environment for which a detailed statement is required to be prepared pursuant to RCW 43.21C.030.

(c) Rules and procedures applicable to the preparation of detailed statements and other environmental documents, including but not limited to rules for timing of environmental review, obtaining comments, data and other information, and providing for and determining areas of public participation which shall include the scope and review of draft environmental impact statements.

(d) Scope of coverage and contents of detailed statements assuring that such statements are simple, uniform, and as short as practicable; statements are required to analyze only reasonable alternatives and probable adverse environmental impacts which are significant, and may analyze beneficial impacts.

(e) Rules and procedures for public notification of actions taken and documents prepared.

(f) Definition of terms relevant to the implementation of this chapter including the establishment of a list of elements of the environment. Analysis of environmental considerations under RCW 43.21C.030(2) may be required only for those subjects listed as elements of the environment (or portions thereof). The list of elements of the environment shall consist of the "natural" and "built" environment. The elements of the built environment shall consist of public services and utilities (such as water, sewer, schools, fire and police protection), transportation, environmental health (such as explosive materials and toxic waste), and land and shoreline use (including housing, and a description of the relationships with land use and shoreline plans and designations, including population).

(g) Rules for determining the obligations and powers under this chapter of two or more branches of government involved in the same project significantly affecting the quality of the environment.

(h) Methods to assure adequate public awareness of the preparation and issuance of detailed statements required by RCW 43.21C.030(2)(c).

(i) To prepare rules for projects setting forth the time limits within which the governmental entity responsible for the action shall comply with the provisions of this chapter.

(j) Rules for utilization of a detailed statement for more than one action and rules improving environmental analysis of nonproject proposals and encouraging better interagency coordination and integration between this chapter and other environmental laws.

(k) Rules relating to actions which shall be exempt from the provisions of this chapter in situations of emergency.

(l) Rules relating to the use of environmental documents in planning and decision making and the implementation of the substantive policies and requirements of this chapter, including procedures for appeals under this chapter.

(m) Rules and procedures that provide for the integration of environmental review with project review as provided in RCW 43.21C.240. The rules and procedures shall be jointly developed with the department of ~~((community, trade, and economic development))~~ commerce and shall be applicable to the preparation of environmental documents for actions in counties, cities, and towns planning under RCW 36.70A.040. The rules and procedures shall also include procedures and criteria to analyze planned actions under ~~((RCW 43.21C.031(2)))~~ section 303 of this act and revisions to the rules adopted under this section to ensure that they are compatible with the requirements and authorizations of chapter 347, Laws of 1995, as amended by chapter 429, Laws of 1997.

Ordinances or procedures adopted by a county, city, or town to implement the provisions of chapter 347, Laws of 1995 prior to the effective date of rules adopted under this subsection (1)(m) shall continue to be effective until the adoption of any new or revised ordinances or procedures that may be required. If any revisions are required as a result of rules adopted under this subsection (1)(m), those revisions shall be made within the time limits specified in RCW 43.21C.120.

(2) In exercising its powers, functions, and duties under this section, the department may:

(a) Consult with the state agencies and with representatives of science, industry, agriculture, labor, conservation organizations, state and local governments, and other groups, as it deems advisable; and

(b) Utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies, organizations, and individuals, in order to avoid duplication of effort and expense, overlap, or conflict with similar activities authorized by law and performed by established agencies.

(3) Rules adopted pursuant to this section shall be subject to the review procedures of chapter 34.05 RCW.

**Sec. 313.** RCW 43.21C.095 and 1983 c 117 s 5 are each amended to read as follows:

The rules ~~((promulgated))~~ adopted under RCW 43.21C.110 shall be accorded substantial deference in the interpretation of this chapter.

**Sec. 314.** RCW 90.48.260 and 2011 c 353 s 12 are each amended to read as follows:

(1) The department of ecology is hereby designated as the state water pollution control agency for all purposes of the federal clean water act as it exists on February 4, 1987, and is hereby authorized to participate fully in the programs of the act as well as to take all action necessary to secure to the state the benefits and to meet the requirements of that act. With regard to the national estuary program established by section 320 of that act, the department shall exercise its responsibility jointly with the Puget Sound partnership, created in RCW 90.71.210. The department of ecology may delegate its authority under this chapter, including its national pollutant discharge elimination permit system authority and duties regarding animal feeding operations and concentrated animal feeding operations, to the department of agriculture through a memorandum of understanding. Until any such delegation receives federal approval, the department of agriculture's adoption or issuance of animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives pertaining to water quality shall be accomplished after reaching agreement with the director of the department of ecology. Adoption or issuance and implementation shall be accomplished so that compliance with such animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives will achieve compliance with all federal and state water pollution control laws. The powers granted herein include, among others, and notwithstanding any other provisions of this chapter ~~((90.48 RCW))~~ or otherwise, the following:

(a) Complete authority to establish and administer a comprehensive state point source waste discharge or pollution discharge elimination permit program which will enable the department to qualify for full participation in any national waste discharge or pollution discharge elimination permit system and will allow the department to be the sole agency issuing permits required by such national system operating in the state of Washington subject to the provisions of RCW 90.48.262(2). Program elements authorized herein may include, but are not limited to: (i) Effluent treatment and limitation requirements together with timing requirements related thereto; (ii) applicable receiving water quality standards requirements; (iii) requirements of standards of

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performance for new sources; (iv) pretreatment requirements; (v) termination and modification of permits for cause; (vi) requirements for public notices and opportunities for public hearings; (vii) appropriate relationships with the secretary of the army in the administration of his or her responsibilities which relate to anchorage and navigation, with the administrator of the environmental protection agency in the performance of his or her duties, and with other governmental officials under the federal clean water act; (viii) requirements for inspection, monitoring, entry, and reporting; (ix) enforcement of the program through penalties, emergency powers, and criminal sanctions; (x) a continuing planning process; and (xi) user charges.

(b) The power to establish and administer state programs in a manner which will (~~insure~~) ensure the procurement of moneys, whether in the form of grants, loans, or otherwise; to assist in the construction, operation, and maintenance of various water pollution control facilities and works; and the administering of various state water pollution control management, regulatory, and enforcement programs.

(c) The power to develop and implement appropriate programs pertaining to continuing planning processes, area-wide waste treatment management plans, and basin planning.

(2) The governor shall have authority to perform those actions required of him or her by the federal clean water act.

((2)) (3) By July 31, 2012, the department shall:

(a) Reissue without modification and for a term of one year any national pollutant discharge elimination system municipal storm water general permit applicable to western Washington municipalities first issued on January 17, 2007; and

(b) Issue an updated national pollutant discharge elimination system municipal storm water general permit applicable to western Washington municipalities for any permit first issued on January 17, 2007. An updated permit issued under this subsection shall become effective beginning August 1, 2013.

(i) Provisions of the updated permit issued under (b) of this subsection relating to new requirements for low-impact development and review and revision of local development codes, rules, standards, or other enforceable documents to incorporate low-impact development principles must be implemented simultaneously. These requirements may go into effect no earlier than December 31, 2016, or the time of the scheduled update under RCW 36.70A.130(5), as existing on the effective date of this section, whichever is later.

(ii) Provisions of the updated permit issued under (b) of this subsection related to increased catch basin inspection and illicit discharge detection frequencies and application of new storm water controls to projects smaller than one acre may go into effect no earlier than December 31, 2016, or the time of the scheduled update under RCW 36.70A.130(5), as existing on the effective date of this section, whichever is later.

(4) By July 31, 2012, the department shall:

(a) Reissue without modification and for a term of two years any national pollutant discharge elimination system municipal storm water general permit applicable to eastern Washington municipalities first issued on January 17, 2007; and

(b) Issue an updated national pollutant discharge elimination system municipal storm water general permit for any permit first issued on January 17, 2007, applicable to eastern Washington municipalities. An updated permit issued under this subsection becomes effective August 1, 2014."

Correct the title.

On page 47, line 13 of the striking amendment, after "RCW 36.70A.490;" insert "and"

On page 47, line 14 of the striking amendment, after "sources" strike "; and" and insert "."

On page 47, at the beginning of line 15, strike all material through line 35 on page 49

Renumber the remaining sections consecutively and correct any internal references accordingly. and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Hargrove moved that the Senate concur in the House amendment(s) to Second Engrossed Substitute Senate Bill No. 6406.

Senator Hargrove spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Hargrove that the Senate concur in the House amendment(s) to Second Engrossed Substitute Senate Bill No. 6406.

The motion by Senator Hargrove carried and the Senate concurred in the House amendment(s) to Second Engrossed Substitute Senate Bill No. 6406 by voice vote.

The President declared the question before the Senate to be the final passage of Second Engrossed Substitute Senate Bill No. 6406, as amended by the House.

ROLL CALL

The Secretary called the roll on the final passage of Second Engrossed Substitute Senate Bill No. 6406, as amended by the House, and the bill passed the Senate by the following vote: Yeas, 34; Nays, 13; Absent, 0; Excused, 2.

Voting yea: Senators Becker, Benton, Carrell, Delvin, Eide, Ericksen, Fain, Frockt, Hargrove, Hatfield, Haugen, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Litzow, Morton, Nelson, Parlette, Pflug, Ranker, Regala, Roach, Rolfes, Schoesler, Sheldon, Shin, Swecker, Tom and Zarelli

Voting nay: Senators Baumgartner, Brown, Chase, Conway, Fraser, Harper, Kline, Kohl-Welles, McAuliffe, Murray, Padden, Prentice and Pridemore

Excused: Senators Hewitt and Stevens

SECOND ENGROSSED SUBSTITUTE SENATE BILL NO. 6406, as amended by the House, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator Eide, the Senate advanced to the sixth order of business.

SECOND READING

SENATE CONCURRENT RESOLUTION NO. 8412, by Senators Brown and Parlette

Returning bills to their house of origin.

The measure was read the second time.

MOTION

On motion of Senator Eide, the rules were suspended, Senate Concurrent Resolution No. 8412 was advanced to third reading,

the second reading considered the third and the bill was placed on final passage.

The President declared the question before the Senate to be the final passage of Senate Concurrent Resolution No. 8412.

SENATE CONCURRENT RESOLUTION NO. 8412 was adopted on third reading by voice vote.

#### SECOND READING

SENATE CONCURRENT RESOLUTION NO. 8413, by Senators Brown and Parlette

Adjourning SINE DIE.

The measure was read the second time.

#### MOTION

On motion of Senator Eide, the rules were suspended, Senate Concurrent Resolution No. 8413 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

The President declared the question before the Senate to be the final passage of Senate Concurrent Resolution No. 8413.

SENATE CONCURRENT RESOLUTION NO. 8413 was adopted on third reading by voice vote.

#### MOTION

On motion of Senator Eide and without objection, the measures on the second and third reading calendars and held at the desk were referred to the Committee on Rules.

#### MOTION

On motion of Senator Eide, the reading of the Journal for the 30<sup>th</sup> day of the 2012 First Special Session of the 62<sup>nd</sup> Legislature was dispensed with and it was approved.

#### SIGNED BY THE PRESIDENT

The President signed:  
SECOND ENGROSSED SECOND SUBSTITUTE  
SENATE BILL NO. 6204.

#### SIGNED BY THE PRESIDENT

The President signed:  
SECOND ENGROSSED SUBSTITUTE SENATE BILL  
NO. 6406.

#### MESSAGE FROM THE HOUSE

April 10, 2012

MR. PRESIDENT:  
The House has adopted:  
SENATE CONCURRENT RESOLUTION NO. 8412,  
SENATE CONCURRENT RESOLUTION NO. 8413.  
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

#### SIGNED BY THE PRESIDENT

The President signed:  
SENATE CONCURRENT RESOLUTION NO. 8412,  
SENATE CONCURRENT RESOLUTION NO. 8413.

#### MESSAGE FROM THE HOUSE

April 10, 2012

MR. PRESIDENT:  
The Speaker has signed:  
HOUSE BILL NO. 2822.  
and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

#### SIGNED BY THE PRESIDENT

The President signed:  
HOUSE BILL NO. 2822.

#### MESSAGE FROM THE HOUSE

April 10, 2012

MR. PRESIDENT:  
The Speaker has signed:  
SECOND ENGROSSED SENATE BILL NO. 6378.  
and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

#### SIGNED BY THE PRESIDENT

The President signed:  
SUBSTITUTE SENATE BILL NO. 6636.

#### MESSAGE FROM THE HOUSE

April 10, 2012

MR. PRESIDENT:  
The Speaker has signed:  
HOUSE BILL NO. 2824,  
HOUSE BILL NO. 2834.  
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

#### SIGNED BY THE PRESIDENT

The President signed:  
HOUSE BILL NO. 2824,  
HOUSE BILL NO. 2834.

#### MESSAGE FROM THE HOUSE

April 10, 2012

MR. PRESIDENT:  
The Speaker has signed:  
SECOND ENGROSSED SECOND SUBSTITUTE  
SENATE BILL NO. 6204,  
SECOND ENGROSSED SUBSTITUTE SENATE BILL  
NO. 6406,  
SUBSTITUTE SENATE BILL NO. 6636,  
SENATE CONCURRENT RESOLUTION NO. 8412.

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and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

April 10, 2012

MR. PRESIDENT:  
The Speaker has signed:  
SENATE CONCURRENT RESOLUTION NO. 8413.  
and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Under the provisions of SENATE CONCURRENT  
RESOLUTION NO. 8412, the following House Bills were  
returned to the House of Representatives:

THIRD ENGROSSED SUBSTITUTE HOUSE BILL NO.  
2127,

THIRD ENGROSSED SECOND SUBSTITUTE HOUSE  
BILL NO. 2565,

ENGROSSED HOUSE BILL NO. 2821,

HOUSE BILL NO. 2830,

MESSAGE FROM THE HOUSE

MR. PRESIDENT:

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Under the provisions of SENATE CONCURRENT  
RESOLUTION NO. 8412, the following Senate bills were  
returned to the Senate:

SUBSTITUTE SENATE BILL NO. 5940,

ENGROSSED SUBSTITUTE SENATE BILL NO. 6392,

ENGROSSED SENATE JOINT RESOLUTION NO. 8221,

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

At 12:01 a.m., on motion of Senator Eide, the 2012 First  
Special Session of the Sixty-Second Legislature adjourned SINE  
DIE.

BRAD OWEN, President of the Senate

THOMAS HOEMANN, Secretary of the Senate



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